EXHIBIT 14.—*Congressional vote and percent of population voting in 1940 election, by non-poll-tax States*—Continued

State and successful candidate	District	1940 population	Votes cast for successful candidate	Percent of 1940 population	Total votes cast	Percent of 1940 population
Pennsylvania—Continued						
Faddis	25	255, 523	58, 442	23	95, 801	37
Graham	26	341, 221	64, 669	19	126, 942	37
Tibbott	27	428, 490	75, 243	17	145, 751	34
Kelley	28	303, 411	58, 772	19	105, 998	35
Rodgers	29	252, 533	50, 147	20	92, 441	36
Scanlon	30	276, 948	62, 450	22	124, 549	45
Weiss	31	318, 584	76, 819	24	137, 854	43
Eberharter	32	206, 796	62, 121	30	90, 533	44
McArdle	33	287, 077	70, 824	25	128, 723	45
Wright	34	322, 134	75, 004	23	139, 341	43
Rhode Island:						
Forand	1	338, 883	87, 327	26	151, 844	45
Fogarty	2	374, 463	87, 253	23	162, 179	43
South Dakota:						
Mundt	1	485, 829	135, 406	28	227, 373	47
Case	2	157, 132	47, 051	30	71, 178	45
Utah:						
Granger	1	256, 388	62, 654	24	109, 675	43
Robinson	2	293, 922	86, 874	29	137, 206	46
Vermont:						
Plumley	(1)	359, 231	89, 637	25	140, 477	39
Washington:						
Magnuson	1	412, 689	113, 988	28	185, 098	45
Jackson	2	269, 757	66, 314	25	115, 523	43
Smith	3	258, 301	60, 529	23	109, 459	42
Hill	4	244, 908	50, 493	21	98, 496	40
Leavy	5	274, 754	67, 582	24	121, 840	44
Coffee	6	275, 782	71, 536	26	113, 870	41
West Virginia:						
Ramsay	1	281, 333	72, 717	26	136, 632	49
Randolph	2	297, 167	77, 045	26	133, 956	45
Edmiston	3	316, 917	79, 441	25	141, 251	45
Johnson	4	323, 202	82, 979	26	157, 470	49
Kee	5	305, 725	81, 903	27	130, 126	42
Smith	6	378, 630	105, 927	28	171, 689	45
Wisconsin:						
Bolles	1	293, 974	69, 276	23	124, 122	42
Sauthoff	2	319, 069	60, 481	19	136, 842	43
Stevenson	3	290, 719	54, 457	19	118, 399	40
Wasielewski	4	375, 418	57, 381	15	161, 125	43
Thill	5	391, 467	73, 728	19	166, 159	42
Keefe	6	284, 114	66, 821	23	116, 371	41
Murray	7	295, 305	58, 696	20	113, 749	39
Johns		329, 815	49, 005	15	111, 000	33
Hull	9	294, 618	61, 009	21	115, 600	39
Gehrmann	10	263, 088	50, 776	19	106, 026	40
Wyoming:						
McIntyre	(1)	250, 742	57, 030	23	106, 888	43

[1] At large.

Mr. MORSE. Mr. President, in accordance with the unanimous-consent agreement previously entered into, I intend to conclude my remarks for this evening with this summary statement. I sought in this part of my speech to show, first, that I think when we come to interpret any section of the Constitution, including article I, section 2, we must remember that we have to consider the Constitution in its entirety, and we have to look to make certain whether there are other restrictions within the Constitution that bear upon article I, section 2.

In the course of my remarks tomorrow I shall take the position and argue the point that article I, section 2, must be read in light of other restrictions which will be found in the Constitution, particularly in connection with amendments 14 and 15.

Second, I sought to point out in my remarks tonight that we must decide, when we are considering a constitutional question, whether or not we are going to make a liberal, dynamic approach to the Constitution, whether we are going to look upon it as an instrument subject to adjustment of the changing trends of social conditions, or whether we are going to look upon it simply in its literal sense as the product of a dead historic hand.

Next, Mr. President, I sought in my remarks to point out that at the time the Constitution was written the trend, the objective, the point of view of the Constitution fathers was to work in the direction of a national universal suffrage, and instead of imposing further restrictions on the right of suffrage, the result of the Constitutional Convention was to remove theretofore existing restrictions, and it was not until some years later that there was reimposed upon the right of suffrage in this country the poll tax as a limitation upon suffrage itself. Furthermore, that the tax and the property restrictions on suffrage which existed at the time the Constitutional Convention was in session were in the process of being lifted by the States that were parties to the Constitutional Convention.

Lastly, Mr. President, I have sought to point out in these remarks that we cannot escape the fact that the poll tax is an effective economic barrier to a free franchise, and it does, in fact, have the effect of disfranchising people who, under the Constitution, should be recognized as free citizens. It does have the effect of having Members of Congress elected to this body by an exceeding small percentage of the adults of their States in contrast with the much higher percentage of voters who go to the polls in poll-tax-free States.

Tomorrow, in the course of my remarks, Mr. President, I shall proceed to discuss some of the decisions of the United States Supreme Court previously cited and discussed by my good friends on the opposition side of this issue, but I shall endeavor to point out that I think that in many respects the decisions are not subject to the application my good friends have given to them.

With that statement I conclude for the evening.

RECESS

Mr. BROOKS. Mr. President, may I ask to what hour the unanimous-consent agreement provided that we should recess?

The PRESIDING OFFICER. To 1 o'clock tomorrow afternoon.

Mr. WHERRY. Mr. President, in my motion I was about to state the hour to which the recess would be taken.

We have now, as I understand, concluded the business of today's session, so I now move that the Senate, under the order previously entered, take a recess until tomorrow at 1 o'clock p. m.

The motion was agreed to; and (at 10 o'clock and 16 minutes p. m.) the Senate took a recess, the recess being, under the order previously entered, until tomorrow, Wednesday, August 4, 1948, at 1 o'clock p. m.

SENATE

WEDNESDAY, AUGUST 4, 1948

(Legislative day of Wednesday, July 28, 1948)

The Senate met at 1 o'clock p. m., on the expiration of the recess.

Rev. Bernard Braskamp, D. D., pastor of the Gunton-Temple Memorial Presbyterian Church, Washington, D. C., offered the following prayer:

O Thou gracious Benefactor, who art ever making us the beneficiaries of Thy bountiful providence, we rejoice in the glad assurance that Thou wilt not withhold from us anything that is needful if we walk uprightly and that where Thou dost guide Thou wilt provide.

We pray that this assurance of Thy goodness may kindle within our hearts a more vivid sense of social responsibility. Help us to understand that the question, "Am I my brother's keeper?" must be answered conclusively in the affirmative.

Fill us with a longing to minister unto all who are finding the struggle of life so difficult. May we seek to bring about a more ethical and equitable distribution of the blessings of life.

In Christ's name we offer our prayer. Amen.

THE JOURNAL

On request of Mr. WHERRY, and by unanimous consent, the reading of the Journal of the proceedings of Tuesday, August 3, 1948, was dispensed with, and the Journal was approved.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the Senate by Mr. Nash, one of his secretaries.

REPORT OF NATIONAL ADVISORY COUNCIL ON INTERNATIONAL MONETARY AND FINANCIAL PROBLEMS—MESSAGE FROM THE PRESIDENT (H. DOC. NO. 737)

The PRESIDENT pro tempore laid before the Senate a message from the President of the United States, which, with the accompanying report, was referred to the Committee on Banking and Currency.

(For President's message, see today's proceedings of the House of Representatives.)

TRANSACTION OF ROUTINE BUSINESS

By unanimous consent, the following routine business was transacted:

REPORT OF THE DISTRICT OF COLUMBIA ADMINISTRATOR OF RENT CONTROL

The PRESIDENT pro tempore laid before the Senate a letter from the Acting President of the Board of Commissioners of the District of Columbia, transmitting, pursuant to law, the semiannual report of the Administrator of Rent Control of the District of Columbia for the period January 1 to June 30, 1948, which, with the accompanying report, was referred to the Committee on the District of Columbia.

PETITIONS AND MEMORIAL

Petitions, etc., were laid before the Senate and referred as indicated:

By the PRESIDENT pro tempore:

A letter in the nature of a petition from the East Twenty-fifth Assembly District of the Independent Progressive Party of California, San Francisco, Calif., signed by J. Canterbury, chairman, praying for the enactment of legislation providing price controls, etc.; to the Committee on Banking and Currency.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

A resolution adopted by religious, labor, and civic leaders at Philadelphia, Pa., favoring the prompt enactment of civil-rights legislation; ordered to lie on the table.

A resolution adopted by religious, labor, and civic leaders at Philadelphia, Pa., protesting against the arrest of Communist Party leaders; to the Committee on the Judiciary.

ADEQUATE HOUSING FOR WORLD WAR II VETERANS

Mr. O'CONOR. Mr. President, I ask unanimous consent to present for appropriate reference and to have printed in the RECORD a resolution adopted by the Catholic War Veterans, Inc., an outstanding group of patriotic citizens, and endorsed by the Department of Maryland, Disabled American Veterans, in annual convention at Hagerstown, Md., May 7 to 9, 1948. The resolution emphasizes the need of adequate living facilities for veterans of World War II.

There being no objection, the resolution was received, referred to the Committee on Banking and Currency, and ordered to be printed in the RECORD, as follows:

CATHOLIC WAR VETERANS, INC., ENACTMENT OF FEDERAL HOUSING AID BILL

Whereas the most crying need of World War II veterans of today is that of adequate living facilities; and

Whereas a conservative estimate yields a figure of only 710,000 new dwelling units slated for completion this year, but with over 2,000,000 American families in need of adequate housing it is evident that, at present construction rate, several years will be required for construction to come abreast of present needs unless direct Government actions are taken; and

Whereas the major part of the 700,000 dwelling units now under construction are designed for sale at prices not within the reach of the vast majority of veterans today; and

Whereas the National Department of Catholic War Veterans, Inc., has gone on record endorsing passing of the Taft-Ellender-Wagner general housing bill and has petitioned the aid of the various State departments in obtaining passage of that legislation: Now, therefore, be it

Resolved, That the Department of Maryland implement the program of the national department by going on record as favoring direct Government aid on the Federal, State, and municipal levels in the solution of this pressing crisis, Federal action taking the form of congressional enactment of the Taft-Ellender-Wagner housing bill or some similar piece of legislation, with State and municipal action consisting of the appointment needs of veterans in Maryland and Baltimore with the view in mind of rendering complete data to the Federal Government so as to facilitate the carrying out of the provisions of whatever Federal legislation may be enacted; and be it further

Resolved, That copies of this resolution be forwarded to the President of the United States, the Senators, and Representatives from Maryland's six districts, the Governor of Maryland, and the mayor of Baltimore City.

THOMAS M. BAILEY,
Department Commander.
GEORGE W. BLUM,
Department Adjutant.

The above resolution endorsed by the Department of Maryland, Disabled American Veterans, department convention assembled in Hagerstown, Md., May 7-9, 1948.

JAMES F. AUBREY, Sr.,
Department Commander, Department of Maryland, Disabled American Veterans, Takoma Park, Md.

REPORT ON DISPOSITION OF EXECUTIVE PAPERS

Mr. LANGER, from the Joint Select Committee on the Disposition of Executive Papers, to which was referred for examination and recommendation a list of records transmitted to the Senate by the Acting Archivist of the United States that appeared to have no permanent value or historical interest, submitted a report thereon pursuant to law.

BILL AND JOINT RESOLUTION INTRODUCED

A bill and a joint resolution were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

(Mr. MORSE introduced Senate bill 2927, to amend the Servicemen's Readjustment Act of 1944, as amended, and for other purposes, which was referred to the Committee on Labor and Public Welfare, and appears under a separate heading.)

By Mr. TYDINGS (for himself and Mr. O'CONOR):

S. J. Res. 238. Joint resolution proposing an amendment to the Constitution of the United States; to the Committee on the Judiciary.

THE POLL TAX

Mr. WHERRY. Mr. President, I ask the distinguished President pro tempore of the Senate to state what the parliamentary situation is.

The PRESIDENT pro tempore. In response to the inquiry, the Chair will state that the pending question is on the appeal of the Senator from Ohio [Mr. TAFT] from the decision of the Chair holding that the cloture motion on the motion to take up House bill 29 was not in order. Under the order of the Senate of yesterday, the junior Senator from Oregon [Mr. MORSE] has the floor.

Mr. WHERRY. Mr. President, will the Senator from Oregon yield for an announcement?

Mr. MORSE. I yield.

AUTHORIZATION FOR REPORT AND CONSIDERATION OF BILLS, ETC.

Mr. WHERRY. Mr. President, I ask unanimous consent that, subsequent to the conclusion of the business of the Senate today, any committee now considering proposed legislation recommended in the recent message of the President to the Congress be authorized to report a bill thereon; that any such bill may be deemed to have been read twice and to have gone over one legislative day, and that a motion on tomorrow to proceed to its consideration may be in order.

I ask further unanimous consent that, subsequent to the conclusion of the day's business, the Secretary be authorized to receive a message from the House, that any bill received therefrom shall be deemed to have been read twice, and that likewise a motion on tomorrow to proceed to its consideration shall be in order.

The PRESIDENT pro tempore. Is there objection?

Mr. BARKLEY. Mr. President, will the Senator from Nebraska state the request again?

Mr. WHERRY. All we are asking is unanimous consent that any bill reported subsequent to the recess or adjournment following today's session shall be considered as having been reported for the calendar so that we may proceed to take it up tomorrow.

The PRESIDENT pro tempore. Is there objection to the request of the Senator from Nebraska? The Chair hears none, and the order is made.

ANNOUNCEMENT AS TO NIGHT SESSION

Mr. WHERRY. Mr. President, if the Senator from Oregon will yield further, I wish to announce to the Members of the Senate that there will not be a night session tonight. Already there has been released by the chairman of the Policy Committee the reasons for not having a night session, and also, I think, a statement as to what can be expected so far as our program for tomorrow is concerned. Before a motion to recess or adjourn is made today I shall have an additional statement to make to the Members of the Senate, but at this time I think all that is necessary is to say that when the Senate concludes its work today there will be a recess or adjournment, and it is not contemplated that there will be a night session.

THE POLL TAX

The Senate resumed the consideration of the motion of Mr. WHERRY to proceed to the consideration of the bil (H. R. 29) making unlawful the requirement for the payment of a poll tax as a prerequisite to voting in a primary or other election for national officers.

The PRESIDENT pro tempore. The pending question is on the appeal of the Senator from Ohio [Mr. TAFT] from the decision of the Chair holding that the cloture motion on the motion to take up House bill 29 was not in order.

Mr. MORSE. Mr. President, on completing my remarks yesterday——

Mr. McMAHON. Mr. President, will the Senator yield for an insertion?

Mr. MORSE. I was just about to announce that I shall find it necessary to decline to yield for any purpose until I complete my remarks—and I say this with regret to my good friend the Senator from Connecticut, as I am sure he understands. As I said last night during the course of my formal remarks on the pending subject, I shall not yield for any purpose, for two reasons: First, because I think it of importance that the Republican side of the aisle make its statement in the RECORD with continuity as to its position on the constitutionality of the anti-poll-tax legislation. Second, as I said last night, we have no desire on this side of the aisle, and certainly the present speaker has no desire, to aid or abet in any way prolonged debate by way of what is commonly known as a filibuster. Nevertheless, for the RECORD and for future reference I think it important at this time that a statement, of unbroken continuity, be placed in the RECORD, setting forth the position of the proponents of the anti-poll-tax bill as to its constitutionality and as to its merits from the standpoint of being sound civil-rights legislation.

Further by way of recapitulation, Mr. President, I think it is important that once again I call the attention of the American people to what I think is the realistic parliamentary fact which confronts us in this special session of Con-

gress. As I said in my remarks last night, and I repeat it today, I think it has been clearly demonstrated in this special session of Congress that there is no chance of passing any anti-poll-tax legislation, and the reason why there is no chance of doing that is the obvious fact that we are confronted with a concerted movement on the part of a group of Senators on the Democratic side of the aisle to use, to the maximum extent the rules permit, their parliamentary privileges in the Senate.

The American people should thoroughly understand that when a group of Senators—5, 6, 10, 11, or 12—make up their minds to prevent the passage of legislation, the archaic rules of the Senate give them the power to succeed in their attempt. So, in my judgment, there is no chance of passing any civil-rights legislation at this special session of Congress, be it anti-poll-tax legislation, FEPC legislation, antilynch legislation, or any other section of the President's civil-rights program, so long as there is the clear, obvious, and announced determination on the part of leadership on the Democratic side of the aisle, representing those who have the power in their hands, to prevent the passage of any civil-rights legislation by the exercise of their full parliamentary rights. So long as the Democrats take that position, we cannot break a filibuster in this special session of Congress. We cannot break it because time does not permit. We cannot break it because physically it is impossible to break it due to the fact that a small group of Senators, resting between their separate speeches, can wear down the majority, because the majority has to be on hand for quorum calls and for sudden votes which may be requested.

Therefore, Mr. President, as I said about 2 years ago in an article which I published in Collier's magazine entitled "D-day on Capitol Hill," I think there is no chance at all of eliminating what I consider to be the filibuster evil under the rules of the United States Senate, unless at the beginning of a regular session of Congress—and I proposed it in the article—the majority party in the Senate makes up its mind to amend rule XXII of the Senate rules.

As I pointed out in that article, the American people should understand that under rule XXII, which refers to the filing of a cloture petition on a measure, the petition is not applicable to motions, such as the motion to take up the anti-poll-tax legislation which was pending before the Senate prior to the appeal that was taken from the ruling of the Chair on cloture.

The Presiding Officer of this body, in what I am sure will be recognized in the years ahead as a historic ruling in the Senate the other day—and a statesmanlike ruling it was, too—pointed out to the Senate that the fundamental issue before us is the problem of amending rule XXII.

Mr. President, I ask unanimous consent to have printed in the body of my remarks at this point the article I published some 2 years ago in Collier's magazine, discussing that very problem, and pointing out then that what we should do in the Senate of the United States is to proceed to amend the rule at the beginning of a regular session. I said we should do so the first day of a regular session, and subsequent to the writing of the article, I submitted in this body an antifilibuster resolution by which I sought to accomplish the purpose which I think we must accomplish, namely, amend rule XXII, so that a cloture petition can be filed on any question pending before the Senate, such as a motion to take up a bill, or a motion to approve the Journal, or any other type of motion.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

D-DAY ON CAPITOL HILL

(By WAYNE L. MORSE, United States Senator from Oregon)

On the floor of the Senate a small band of willful men had been holding up Senate action on a bill to promote equal employment opportunity for all Americans, regardless of race, religion, or color. A clear-cut majority of the Senate favored the principles of the bill. President Truman, on behalf of the Democrats, had asked for the legislation. The Republican Party platform of 1944 had pledged itself to the principles of the measure. Nevertheless, a group of southern Democrats had banded together to talk the bill to death. Hearing it, a young veteran burst out to me:

"But, Senator, it's dictatorship."

The air in the Senate was fervid with oratory. Senator WALLACE WHITE, of Maine, the Republican leader, defended the filibuster, although not a party to it, by stating that: "There may be times and circumstances in which minorities can in one way alone successfully resist the power of a temporary majority."

My veteran friend was bewildered. "If the Senate's rules allow a minority to control it," he asked, "where's democracy in Congress?" And if we don't have democracy in Congress, how can we preserve democracy in the United States?

Millions of people are asking these same questions. Not only because they have witnessed the disgraceful spectacle of filibustering in the Senate, but also because in the House of Representatives they have seen the principle of majority rule stifled by the small but powerful Rules Committee.

It is common knowledge that 7 members of this 12-man committee wield what amounts to dictatorial power over the entire House. These men have time and time again prevented important measures from being properly considered in debate by the House as a whole, or even from reaching the House floor.

The theory behind the Rules Committee is that it should act as a traffic director on the legislative highway. In actual fact, the committee has become an obstruction to orderly traffic. Like feudal barons who levied a toll upon those who used their roads, the committee often allows bills to come before the House only on the condition that certain amendments be written into them. It frequently usurps the functions of the regular legislative committees by conducting hearings on bills that already have been carefully studied by the proper legislative committee and not confining itself, as it should, to questions of procedure.

UNFAIR CONTROL OF LEGISLATION

There have been notable occasions when the Rules Committee, in effect, has originated legislation, although it was never contemplated that it should exercise this privilege. Recently, it will be recalled, the House Labor Committee approved the kind of bill it thought would contribute to labor peace. But a majority of the Rules Committee favored the Case bill, which the legislative committee had rejected. So it ruled that the Case bill be considered by the House rather than the Labor Committee's bill.

The job of the Rules Committee is to report to the House, in conjunction with a bill, a resolution setting the terms of debate upon the measure. Often the committee blocks the legislative road completely by failing to give a bill the right of way to the House floor under any rule of debate. Sometimes the committee works its will upon the entire House membership by imposing "gag rules" that restrict the time allowed for debate and the circumstances under which amendments may be offered.

There is no hope for government by the majority in Congress until the rules are thoroughly overhauled to free the House and the Senate from the legislative tyranny of a willful minority in either branch. These two infections of the body politic—the powers of the Rules Committee and the filibuster—are sources of intolerance and reaction. The Rules Committee must be assigned its original role of traffic director for House bills, and the Senate must adopt rules empowering a majority to end a filibuster.

It must be made clear to the voters that their substantive rights in the passage of all sound legislation needed in the interests of the general welfare cannot be separated from their procedural rights in attaining passage of such legislation. The people must be made to realize that the archaic rules of Congress permit self-seeking minority blocs to defeat legislation the people want without letting it come to a vote.

Most writers dip their pens in despair when they attempt to make suggestions for remedying these two evils. They point out that any resolution to reform the House Rules Committee would be referred to that committee itself—which group could be expected to protect its dictatorship by quietly filing the proposal.

They call attention to the fact that the Rules of the Senate have been carefully devised to protect the filibuster. A third plus one of the Senators can now prevent cloture—put a limit on the length of time a Senator may talk—thereby allowing a filibuster to continue until the legislation against which it is directed has been withdrawn or emasculated. Thus, most critics say it is almost hopeless to propose a resolution to eliminate the filibuster because the proposal itself would be subject to the filibuster technique.

The Senate has a Rules Committee, too. Although it does not have the sweeping powers possessed by the House Rules Committee, it does have jurisdiction over any proposal to change the rules and procedures of the Senate. Judging from the past, this committee could be counted upon to bury alive any proposal referred to it which seeks to reform the procedures of the Senate in the interest of majority rule.

EXAMPLE IN SELF-DEFENSE

A good example of the way the Rules Committees of both Houses protect what they believe to be their vested interests is the action which they took in passing upon the resolution setting up the La Follette-Monroney committee to make recommendations for the reorganization of Congress.

Since early 1945 this committee has been making an exhaustive study of various proposals for the reorganization of Congress, and it recently submitted a splendid report on the subject.

However, although the report presents sound proposals for reorganizing most other congressional committees, it makes no recommendations whatsoever in regard to the House Rules Committee, and says nothing about the colossal waste of congressional time occasioned by the filibuster. The omissions are startling, but no fault of the La Follette-Monroney committee.

The resolution that set it up was rewritten by Senate and House Rules Committees specifically to prohibit the special committee from making "any recommendations with respect to the rules, parliamentary procedures, practices, and/or precedents of either House."

But the problem is not as hopeless as the experts seem to think it is, provided enough Members of the Congress have the will to make the fight. The situation calls for a two-front attack in both Houses of Congress. The time to attack is on the first day of the new Congress next January.

On the first day of a new Congress the House adopts the rules that will guide it for the next 2 years. Usually the rules of the last Congress are accepted without change, by a routine motion. But that need not be the case. During that brief period on the opening day between the time that the Speaker of the House opens the session of the new Congress and the time when the House passes a motion adopting the rules of its previous session with whatever changes it may wish to authorize, the Rules Committee is temporarily stripped of power.

Hence it is at this time that the proponents of majority rule must strike their blows against the dictatorship of the committee. They must be prepared to offer at precisely the right moment an amendment to the rules depriving the committee of its broad powers over legislation, limiting it to the task of directing legislative traffic on the House floor.

This proposal would become pending business of the House, open to full debate on the floor and not subject to reference to the Rules Committee. The changes would become effective if approved by a majority of the House.

If the majority of the Members of the new Congress elected next November really want to establish majority rule in the House and be freed from the dictatorial domination of the Rules Committee, let them stand up and be counted on the opening day of the new session.

A similar fight for democracy should be waged in the Senate on the first day of the next session of Congress. On that day all Senators who believe in the establishment of majority rule in the Senate should support a resolution aimed at preventing any future filibusters. By a majority vote such a resolution can be made the subject of Senate business and disposed of without reference to committee. There is little doubt, of course, that the introduction of such a resolution will be vigorously opposed by the defenders of the filibuster. The sponsors of Senate rule by the minority already have made themselves clear. During the recent FEPC filibuster, Democratic Senator Tydings, of Maryland, stated: "The rule of the majority. The rule of votes. Majority to Hades * * * Let us not fool ourselves with the silly thought that majorities are always right."

Democratic Senator RUSSELL, of Georgia, rejected the idea of "a pure democracy, where every man's vote would be counted on every issue," and then later referred to the filibuster as a "bulwark against oppression by a mere popular majority."

WILL USE OBSTRUCTIVE TACTICS

It is clear that these Senators will wage a last-ditch fight against antifilibuster legislation with their customary weapon, the filibuster. However, a filibuster can be defeated. The recent FEPC filibuster could have been broken if a serious attempt to do so had been made by the Democratic Senators.

At that time the Democratic majority in the Senate, supported by many Republicans, recessed the Senate between 4 and 6 o'clock each afternoon during the filibuster, and on Friday afternoon recessed until each following Monday at noon. The Democratic administration made public statements in support of the FEPC, but took no effective action against the filibuster. No Democratic Senator and only a few Republican Senators were willing to join in my suggestion at that time to hold the Senate in continuous session for 24 hours a day for as many days, weeks and months as might be necessary to break it. An opportunity to establish, once and for all, majority rule in the Senate was passed up. It should not happen again.

Under the filibuster with all its insidious effrontery, the principle of rule by a majority is denied the people in the determination of congressional policy. I do not say that the majority is always right; but I do say that under our form of representative government a minority of Senators should not be permitted, by means of the filibuster, to block legislation favored by the majority. If the majority passes legislation which the people of the country do not favor, it must answer to the voters of the country for their action on that legislation, and the voters will then have a chance to send men to the Senate under instructions to repeal any legislation that the people do not want.

There is no way to smash a filibuster but to exhaust the filibusters by forcing them to speak day after day for 24 hours a day.

In a very real sense a filibuster is an endurance test. If a majority of the Senators really want to free themselves from the dictates of a willful minority they must be willing to take the time and undergo the physical strain that may be necessary to abolish once and for all the filibuster travesty.

If a majority of the present Senate really doesn't want to make that fight, then the voters should start finding it out in the 1946 elections. They should see to it that they send back to the Senate men pledged to make that fight. For my part, I am determined that the fight shall be made. But it cannot be made without the assistance of Senators in both parties. It will not be a pleasant fight. But with demonstrated public backing, it undoubtedly would end quickly.

FOR THE DIGNITY OF THE SENATE

When continuous sessions were proposed as the only effective method of beating the recent FEPC filibuster, the criticism was made that the procedure was beneath the dignity of Senators. That, of course, was pure nonsense. Nothing could be more undignified than the manner in which the Senate record is disgraced with long-winded ranting and meaningless talk during a filibuster. My proposal for continuous sessions of the Senate has been criticized as too dramatic. That argument is without weight. It is highly important that this issue be fully dramatized in order to impress upon the American people its vital importance to their legislative rights.

There are two reasons why it is important that the fight to pass an antifilibuster resolution should be waged at the beginning of the next session of Congress. First, it should be conducted concurrently with the fight to establish majority rule in the House in order that public attention may be focused on the same basic issue, namely, the need of democracy in both Houses of Congress.

Second, if the resolution is followed by a filibuster, it will not hold up any other legislation, since none will be ready for Senate action. It would be very difficult to break a filibuster near the close of a session, because the unity of action required on the part of Senators is difficult to obtain when so many of them are anxious to recess and go home. It is likewise difficult to wage a successful fight against a filibuster in the middle of a session, since the argument is always made that taking the time to defeat a filibuster blocks actions on other legislation vital to the welfare of the country.

One rule in political strategy, as in boxing, is never to telegraph your punches. But this fight involves more than political strategy. This is a fight to establish the people's rights to democratic procedures in their Congress, and it is important that the people themselves should become understanding participants. Everyone should know months ahead of time that January 7, 1947, or whatever day Congress reopens, will be D-day on Capitol Hill—Democracy Day for reasserting and reestablishing majority rule in the Congress of the United States; Duty Day for all Members of Congress to restore representative government to the legislative processes of Congress.

If majority rule is to characterize the procedures of Congress, the voters of this country must make that clear to congressional candidates in November. Either we are going to reestablish the principle of majority rule in our Congress or we are going to continue to drift into government by minority interests and bloc pressures. This is another test of liberalism versus reactionism.

It is important that the American people recognize that our form of government can protect their rights only so long as they keep it strong and effective. Representative government is not a machine that works automatically. It is but a set of rules and principles which the people by their own consent have decreed shall be binding upon their own conduct. These principles cannot work unless they are administered by men and women responsive to the will of the voters who elected them.

The people must be ever watchful against institutions—like the filibuster and powers of the House Rules Committee—which permit the perversion of free government by self-seeking men. If the people relax their vigilance, they may lose the fruits of democracy which promote the greatest good for the greatest number within the framework of our private-property economy.

Mr. MORSE. Mr. President, in the article, as I said again in my remarks last night and I want to repeat it today, we must make clear to the American people the relationship between the rules of the Senate and their substantive rights in connection with needed social legislation. In some way, somehow, we must enable every man and woman on the streets of America to understand that the rules of this body have a direct relationship to their liberties and freedoms. We must get them to understand that under rule XXII of this body such power is vested in a small group of men in the Senate of the United States—and it is always an ever-changing group—that five, six, seven, or eight, or more Senators who want to league themselves together can successfully block the passage of any piece of legislation they want to block. The only way we can ever remove this great danger to our national welfare is for a Republican majority in the Senate, come January 1949, to do what I suggested in the Collier's article we should have done in January 1947, namely, make up our mind to change rule XXII in such manner that a cloture petition can be filed on any pending question, be it a measure as now interpreted under rule XXII, or a motion affecting any other item of business.

Mr. President, I shall dwell on this point a while longer, because, as I said last night, I want the American people fully to understand why we are blocked in this special session of Congress in the passing of civil-rights legislation. We are blocked because, in my judgment, a group of Senators on the Democratic side of the aisle have, under the rules, the

power to block the passage of such legislation. I have every reason to believe, as every other Member of the Senate has reason to believe, as the words in the RECORD spoken from the lips of one of their leaders at the special session already show, that they have served notice on the Senate of the United States that they intend to use the rules to the extent of their application in an endeavor to block the passage of civil-rights legislation.

Mr. PEPPER. Mr. President——

Mr. MORSE. Mr. President, I will not yield.

The PRESIDENT pro tempore. The Senator from Oregon has announced that he will not yield.

Mr. MORSE. Mr. President, in view of that parliamentary situation which confronts us, I repeat what I set out in the Collier's article, I repeat what I have said to Republican groups since the writing of that article, that come January 1949, we as a Republican majority in the Senate of the United States, must deliver the American people from the encroachment—which I consider the filibuster power in the Senate of the United States to be—on their rights, welfare, and interests.

I heard the Presiding Officer of this body—and I am sure he will not object to my saying so—in discussing the problem, point out with the crystal clearness that always characterizes his pronouncements, that it is not safe in time of great national crisis to have the rules of the Senate in such form that a small group of men can balk the passage of needed legislation to meet a great national crisis. I agree with the Presiding Officer of this body.

From this forum I remind the people of the country today, Mr. President, that the cloture petition rule in the first instance was found necessary because of the great crisis which then confronted the Nation. It goes back to the dark days of 1917 when the Senate of the United States was threatened to be tied up by a filibuster which endangered the very security of the Nation. The cloture rule was adopted to block that filibuster.

Subsequently thereto interpretation of rule XXII developed whereby the precedents have been well established, as the Presiding Officer pointed out the other day, that the word "measure" in rule XXII is not applicable to a motion, and, therefore, motions to approve the Journal or motions to take up an item of business are not subject to the application of a cloture petition.

I say, Mr. President, that we must change that rule, and we must use the record of this special session of Congress on the anti-poll-tax bill and the concerted drive on the part of the Democratic side of the aisle to block the passage of that bill as our exhibit A to the American people of the necessity of adopting a modification of rule XXII, so, as I pointed out in the Collier's article, cloture will be applicable even to a motion to approve the Journal.

Mr. President, I do not like to take a licking any more than anyone else does, but one is called upon sometimes to be realistic enough and honest enough to admit when he is licked. I am perfectly willing here and now to say that in my opinion the proponents of an anti-poll-tax bill in this special session of Congress are licked. I do not think there is any chance of getting through this special session of Congress an anti-poll-tax bill.

Some might say, "Why do you not try to amend rule XXII in this special session of Congress?" I think there are two very good reasons why that cannot be done. In the first place, the time limitation itself would prevent it, because we would be confronted with a filibuster on any proposal to amend rule XXII. I think that is perfectly obvious. We shall need to have a rather long bracket of time in which to beat such a filibuster, and time does not permit in the special session of Congress.

I think we should also be sufficiently realistic to say that we cannot imagine anything the Democrats would relish more than to have us stay here in a long drawn-out fight in an attempt to break a filibuster on a proposal to modify rule XXII, with a great, historic political compaign in the offing, because as a Republican Party we also have the great responsibility of making clear to the American people the importance of a Republican victory in November in the interests of our national welfare. As Republicans we have the responsibility of making clear to the American people that the irreconcilable conflict and controversy between the White House and the majority in the Congress must be brought to an end, and, I will add quickly, Mr. President, that the conflict between the White House and a large number of Senators on the Democratic side of the aisle must be brought to an end. It is not good for our Government. It is not safe, in my opinion, for sound representative government that this conflict between the Congress and the White House, which is the natural result of having the Congress of one political complexion and the White House of another, should longer continue. I think that this campaign is so important in making clear to the American people the importance of a Republican victory in November that I believe we should pass as quickly as we can on the vital issues facing the country relating to housing and inflation, matters which are bringing great suffering to the American people from the standpoint of the high cost of living, and then go into that campaign, assuring the American people that if they will give us a Republican President and a Republican Congress in November we will proceed immediately after the election to put into effect and practice the great progressive, forward-looking platform which my party adopted at Philadelphia.

Mr. President, I think we must be frank enough to say to the American people that we do not propose to be caught in a political trap, or in a parliamentary situation of prolonging the special session of Congress in a fight over a filibuster to modify rule XXII of the Senate, thereby putting ourselves out of the position in which we can give to the American people, as we should, all the help we can in reaching their decision as to how to vote in November.

I think it is important that the Republican Members of this body, at the earliest opportunity, go out into the country and carry these campaign issues to the American people in order to assure a Republican victory in 1948. That is why I say it is unrealistic to suggest that in a special session of Congress time permits the breaking of a filibuster over the proposal to modify rule XXII. Therefore I shall join with my Republican colleagues, now that we shall have demonstrated by the end of this day the impossibility of passing any anti-poll-tax legislation, in recognizing that fact and proceeding to other items on the agenda, giving the American people the assurance that, come January, we intend to make the first order of business the modification of rule XXII. At that time we will fight to a finish any filibuster that develops in the Senate in opposition to a modification of that rule.

Before I proceed to discuss some of the cases which have been stressed by my good friends of the opposition on the constitutional issue which is before us, I should like to invite attention to the fact that there are increasing indications that, through the judicial process, the true meaning of the Constitution, particularly the fifteenth amendment, is going to be put into application. I invite attention to an item which appears on the first page of this morning's New York Times. It reads as follows:

NEW MEXICO INDIANS GET RIGHT TO VOTE

SANTA FE, N. MEX., August 3.—A special three-judge Federal court ruled today that a New Mexico constitutional provision denying the right to vote to Indians was contrary to the United States Constitution.

The decision, in effect, gives the voting privilege in New Mexico to Indians.

The court ruled that New Mexico's law providing that "Indians not taxed" may not vote contravenes the fifteenth amendment of the United States Constitution, which assures a ballot for everyone of voting age regardless of race, creed, or color.

The far-reaching decision was made in a suit that had been filed in behalf of Miguel H. Trujillo, an Isleta Indian, living at the Laguna Pueblo. It charged that Eloy Garley, clerk of Valencia County, had refused to register Trujillo before the New Mexico primary election on June 8.

I have not read the decision, but I shall do so as soon as I can get it in my hands. I cite that case as applicable to the discussion before us only to the extent that it is another brick in the great judicial wall of protection of civil rights that is being built by the courts of America. It is another brick in that wall similar to some other decisions which I shall discuss later in my remarks. I am satisfied that legislation such as our anti-poll-tax legislation will be sustained by the United States Supreme Court when directly before the Court for decision.

That is one reason, among others, why I am opposed to the suggestion made by the distinguished Senator from Arizona [Mr. HAYDEN] early in the special session that we lay aside the anti-poll-tax bill and substitute therefor a proposal for a constitutional amendment.

I am opposed to that approach because I am satisfied, in the first instance, that an anti-poll-tax bill is constitutional. If I did not think so, as I said

last night, Mr. President, I would not be asking my colleagues to vote for it, because I take the position that a Senator who has any doubt as to the constitutionality of any piece of legislation which is called up for a vote in the Senate should, in keeping with his oath of office, vote against the legislation. But I submit that a study of the cases and a careful study of the Constitution will remove any doubt as to the constitutionality of anti-poll-tax legislation.

In the second place, I am opposed to the constitutional-amendment approach because I believe that it would result in years of frustration, years of delay in giving to 10,000,000 people in this country the franchise right to a free ballot, to which they are clearly entitled under the Constitution. I say that because I am satisfied that a terrific campaign, even in the Southern States which have abolished their own poll-tax legislation, would be carried on in order to prevent the ratification by the States of such a constitutional amendment. It does not take very many States to block it.

Therefore, I say that the challenge of statesmanship in regard to anti-poll-tax legislation is to pass the bill pending before the Senate and then give to the courts of the country, in accordance with our system of checks and balances, and in accordance with the judicial rights of our courts under the Constitution, an opportunity to render a decision squarely in point involving the interpretation of an anti-poll-tax bill itself. As I stated last night, up until this time the litigation which has reached the Supreme Court on this issue has been what we call mixed litigation, at best. It has involved mixed questions of interpretation of State law and State election problems in relation to article I, section 2, of the Constitution. There has not been before the Supreme Court a bill passed in accordance with the enabling clauses of various sections of the Constitution, in a case dealing directly with the poll-tax issue, which raises the question as to whether or not such a bill falls within the legislative power of Congress, for example, in carrying out its obligations under the fifteenth amendment.

Most of my constitutional argument today--but not all of it—will rest upon the powers and duties of Congress under the fifteenth amendment. I think it is interesting to note that in the New Mexico decision announced in the New York Times this morning, and apparently rendered yesterday, that court considers the fifteenth amendment as the basis for declaring null and void the constitutional provision of the State of New Mexico which sought to deny to Indians the right to vote because they did not pay taxes.

During the past few days there have been very learned discussions on the floor of the Senate as to whether the Congress has the authority under our Constitution to enact legislation such as that proposed in House bill 29. This is not a new area of discussion. The niceties of the legal questions have been argued in committees of Congress and on the floors of both Houses from time to time for about 6 years now. There have been able and eminent lawyers on both sides of the question. In the light of this fact, I think that every Member of Congress is going to have to be his own constitutional lawyer on this question. It is rather clear that the majority of both Houses have consistently believed—and so voted—that Congress has the constitutional authority to abolish the poll tax insofar as it affects the election of Federal officers.

Let me take just a moment to review the history of this legislation. In the Seventy-seventh Congress, the House passed House bill 1024, an anti-poll-tax bill similar to the measure now under discussion, by a vote of 252 to 84 on October 12, 1942. During the Seventy-eighth Congress, the House on May 25, 1943, again passed House bill 7, similar to House bill 29, and sent it over to the Senate by a vote of 265 to 110. Again, the House during the Seventy-ninth Congress resolved its doubts about the constitutionality of this proposed legislation and passed House bill 7, on June 12, 1945, by a vote of 251 to 105. The bill I now speak in behalf of was passed by the House, after full hearings before the Committee on Administration, by a vote of 290 to 112, on July 21, 1947.

Committees of the Senate have given full and careful consideration to the constitutionality of this proposed legislation, and have repeatedly reported it to the Senate. Extensive hearings, at which many eminent constitutional lawyers appeared and testified, were held by the Senate Judiciary Committee in 1942. I was not a Member of this body at that time, but I understand that the late Senator George Norris, a member of the committee and a distinguished lawyer in his own right, went into those hearings with very serious reservations in his own mind regarding the constitutionality of this proposed legislation—the power of Congress to abolish the poll-tax requirement by statute. After listening to countless witnesses who appeared and after making his own painstaking legal research, Senator Norris was not only convinced that Congress did have the constitutional power and responsibility for eliminating these taxes, but he himself wrote the majority report and led the fight on the floor of the Senate for the bill during the fall of 1942. I recommend that historic debate and the report of Senator Norris' Judiciary Committee in 1942 to any of my brethren who may have any doubts as to the constitutionality of this bill. In the Seventy-eighth Congress the Senate Judiciary Committee found that legislation such as House bill 29 was constitutional, and the committee reported the then pending bill to the Senate. House bill 29 was itself considered at length by the Senate Rules and Administration Committee, and was reported favorably in the Senate on April 30, 1948.

I mention these facts simply to show that in the light of the legislative history of anti-poll-tax legislation in this and preceding Congresses, a substantial majority of the Members have come to the conclusion, and I think a very sound one, that this proposed legislation is constitutional.

I have some views on this question which I should like to discuss.

First, a large number of cases have been cited by the opponents of this proposed legislation in an attempt to show that it cannot be constitutionally enacted by the Congress. But not a single one has been, or can be, cited to show that House bill 29 is unconstitutional, for the simple and incontrovertible reason that the Supreme Court of the United States has never had an occasion to pass on whether an act of Congress such as is proposed in House bill 29, abolishing the payment of a poll tax as a prerequisite to voting in a Federal election, is or is not constitutional. That question has never been before the Court. We can argue from now until doomsday, Mr. President, about the cases that involve what I call mixed litigation, cases which involve the application of poll-tax laws to both State and Federal elections; but, as I said last night, all the Court has to do is to pass on the fact that the measure is offered as a true taxing measure, in order to eliminate from its discussion or consideration any other facet of the case. Let the Congress pass an anti-poll-tax measure under its alleged constitutional power to protect the ballot of free citizens in a national election for Federal officers, and then the Court will have to lay down a decision directly "on the nose" of our problem. I am satisfied that, if the Court is given such a set of facts, there will be no escape from a decision that the bill is constitutional, because in my judgment the Court will find that poll taxes contravene the fifteenth amendment.

Mr. President, the Constitution affords a number of bases on which the Congress may, in my opinion, properly and constitutionally enact a statute abolishing the poll-tax requirement.

Section 4 of article I requires that—

> The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

This grant of power is further implemented by broad legislative authority contained in section 8 of article I of the Constitution, which empowers Congress—

> To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

Before I conclude, I shall have something to say about the power of the Congress to perpetuate a republican form of government; but I call especial attention to this enabling clause of article I of section 8 of the Constitution, which gives the Congress the clear constitutional power and places upon it the constitutional duty of passing whatever laws are necessary to carry out the provisions of the Constitution. It is vital in America today to preserve a republican form of government; and in my judgment we cannot preserve, in the true constitutional sense, a republican form of government if 10,000,000 supposedly free citizens are denied a free ballot box in a

national election. That is a vital constitutional issue, Mr. President, and I submit that when the Supreme Court has an opportunity to pass on it directly by way of interpreting and applying the constitutional powers under an anti-poll-tax bill passed by the Congress, the Court will find that the enabling clauses are a part of the basis for the constitutionality of the act.

These two broad provisions—section 4 of article I and section 8 of article I—have constituted the basis of a number of Federal statutes designed to rid the elective machinery of certain evils and burdens. The Federal Corrupt Practices Act is one, and the act, passed during the recent war exempting members of the armed services from the payment of poll taxes, is another example. Both those examples, and likewise the exemption which is sought under the bill now under discussion, rest upon the constitutional power to regulate the manner of holding elections.

Let me repeat that, Mr. President, because I desire to dwell at some length on the anti-poll-tax bill which, in fact, we passed when we enacted the soldier voting measure during the war. I want to connect the constitutional theory of such acts as the Corrupt Practices Act and the Soldier Voting Act, with its anti-poll-tax provision, to sections 4 and 8 of article I of the Constitution. Therefore, I repeat the reading of those two sections. Section 4 says:

> The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.

Section 8 says:

> To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

Mr. President, Members of this body I am sure would be enlightened, and some, I think, no little amused, if they would read the debates as recorded in the CONGRESSIONAL RECORD at the time the Corrupt Practices Act was under consideration, and at the time the soldiers vote bill was under consideration. They would find a remarkable similarity between the arguments then made and the arguments now made by the opponents of an anti-poll-tax bill. It was contended by the opponents in those debates that the prerogatives and the rights of the States were being infringed and impinged upon by such legislation. I think there is only one place to meet the issue of States' rights. Let the record be perfectly clear that I shall defend States' rights as granted under the Constitution as vigorously as any other Member of the Senate, but I shall not read into the Constitution, as I submit many of my colleagues do, the vesting in the States of rights which in fact were delegated to the Federal Government under the Constitution.

I say sections 4 and 8 of article I of the Federal Constitution delegated broad powers to the Congress of the United States in protecting national elections. In my view, it is impossible to read those sections and give any other meaning to them. Therefore, from time to time in the past the Congress of the United States has seen fit to enact legislation in the very face of arguments that such legislation, which would keep pure the national elections by way of congressional law, impinged upon States' rights.

Now a word or two about the soldier-vote bill that was passed during the war. The bill contains an anti-poll-tax provision. The bill, as the CONGRESSIONAL RECORD will show, and I shall go to it in a minute, was a Republican bill. I want to say to the proponents of the anti-poll-tax legislation throughout the Nation, and I want to say to some of those in minority groups who from time to time raise questions as to the good faith of the Republicans in connection with civil-rights legislation, that we can stand on the record of our support of civil-rights legislation. Let us see whether or not the Democrats can.

The distinguished junior Senator from Illinois [Mr. BROOKS] offered an amendment to the soldier-vote bill to eliminate the poll-tax restriction. Let me go to the CONGRESSIONAL RECORD. It speaks for itself. I turn to the CONGRESSIONAL RECORD of August 25, 1942, at which time the soldier-vote measure was pending before the Congress.

Mr. KNOWLAND. Mr. President, would the Senator yield merely for an inquiry? Is the Senator going to put the page number in the RECORD at this point, so it will make it easier to find?

Mr. MORSE. I refer to the CONGRESSIONAL RECORD for August 25, 1942, starting on page 6970. The Senator from Illinois [Mr. BROOKS] said:

> Mr. President, I do not desire to prolong the argument. I merely wish to add that the junior Senator from Illinois is not concerned or is not attempting in any way to interfere with the election, the method of holding the election, or the conduct of the election in any State.
>
> I wish to reiterate what I stated yesterday, the Federal Government, by vote of this body, has reached into the sovereign States and said to the young manhood of the States, "You register and present yourselves for service wherever you are told to go by the Federal Government." Many of them left without paying a poll tax, many of them left without registering their right to vote at home. By no choice of theirs, by no act or thought of theirs, they are scattered all over the world, and this body, which by its vote created the situation by which they find themselves throughout the world, can do well to remove the simple restrictions which deprive them of the right to participate in the choice of those who shall in the future occupy seats in this body, while we talk about spreading four freedoms throughout the world after the war.
>
> We have told our people that soon, I understand, we will have another bill under which we will register more of our citizens. We say they can no longer live as usual, think as usual, or have business as usual, but by our conduct apparently we are going to say to them, "We are going to conduct our political restrictions as usual," notwithstanding what we do about their vote. We may say that we love the soldier, and that we want every soldier to have the right to vote, but when one votes against giving him the right to vote in a primary, or against removing a simple restriction, he proves the depth of his love and affection for the men in the armed services. We have no desire to attempt to interfere in any State, but the rights of those men rest in this body, and I am ready to have the record made on the pending amendment.

This is the Republican Senator from Illinois [Mr. BROOKS] making a speech in support of his amendment to eliminate the poll-tax requirement from the soldier-vote measure.

The Senator from Illinois brought out very clearly in his remarks, as it was brought out in other remarks made during the debate, that there was a clear duty vested in the Congress of the United States to see to it that the arbitrary restrictions upon suffrage represented by the poll tax should be removed from the men in uniform. On what theory? On the theory that it interfered with States' rights? On the theory that the proposal was unconstitutional, as has been alleged here throughout the debate on House bill 29? No; but as Senator BROOKS said, on the theory that it is the clear duty and the obligation of the Congress to protect the rights of soldiers to vote in national elections. I say on the theory that under amendment 15 of the Constitution the Congress has a clear duty to pass legislation to protect the right of suffrage of free citizens. That was a Republican proposal, and it was fought for by the Republicans on the floor of the Senate during that historic debate.

Let us look at the record in connection with the vote on the proposal. I have said so many times—I cannot say it too often—that the test of a man's political philosophy, the acid test of his constitutional liberalism, is to be found in his votes in the Congress of the United States. What he says is not so important; what he says is important only if he backs up his statements with votes which support them. Many people, for long years past, Mr. President, have been playing political football with the civil-rights issue in the United States. I would not say that my party has been free of such hypocrites; we have had some of them. But at any time I will lay the Republican record on civil rights alongside of the Democratic record and have no fear as to what an impartial jury of independent voters will say when they come to study and to pass judgment upon the record. I say that because the record is perfectly clear that the Republicans for many years past have attempted to put through civil-rights legislation, and such legislation as Congress has been able to put through has been put through with Republican votes.

During the war the anti-poll-tax provision of the soldier-vote bill came from a Republican Senator from Illinois [Mr. BROOKS]. How did the Senate vote on it? That is a good test of where Republicans and Democrats stand on the issue of civil rights. That, in my judgment, is the test of where people stand on civil-rights matters, at least insofar as true support of anti-poll-tax legislation is concerned. The Brooks amendment was called up for a vote on August 25, 1942, as shown on page 6971 of the CONGRESSIONAL RECORD for that day. Let me make plain what amendment I am talking about. I am talking about

the amendment which proposed to relieve the soldiers from a poll-tax restriction in casting their votes in a Federal election for national officers. That was the issue. It was crystal clear, unequivocal, calling for a vote as to where a man stood on that civil-rights issue. The roll was as follows: Those voting "yea" were: Bone, Brewster, Bridges, Brooks, Brown, Capper, Danaher, Downey, Johnson of California, Johnson of Colorado, Kilgore, La Follette, Lodge, McCarran, McFarland, McNary, Maloney, Mead, Murray, Norris, Pepper, Reynolds, Rosier, Schwartz, Stewart, Taft, Thomas of Idaho, Thomas of Utah, Tunnell, Vandenberg, Walsh, White, Wiley.

Counting the number of Republicans in light of the few Republicans who were in the Senate in 1942, it will be seen that the Republicans in the Senate by a large majority voted to protect the precious civil right that our soldiers should be freed of the restriction of a poll tax on their suffrage.

Let us look at the "nay" votes: Andrews, Bailey, Barkley, Byrd, Clark of Idaho, Clark of Missouri, Connally, George, Gerry, Green, Guffey, Hayden, Herring, McKellar, Radcliffe, Russell, Smathers, Truman, Tydings, Van Nuys.

Mr. President, I am willing to let that record speak for itself as to who believed in delivering on civil-rights legislation. I am willing to let that vote speak for itself as to whether those of us on the Republican side of the aisle are fighting and voting for civil-rights legislation, and whether, in the main the Democrats are merely talking for it. I am willing to let the vote of the President of the United States, when he served as a Member of this body as a Senator from Missouri, in opposition to the proposal offered by the Senator from Illinois to protect the soldiers from a poll tax in the national election, during the war, speak for itself as to whether he means to deliver on civil-rights legislation. We cannot go behind that vote. I repeat, Mr. President, that I shall judge the political record of a man not on what he says, but on both what he says and how he votes to back up what he says.

Mr. President, we Republicans have made other fights for civil-rights legislation, and we have backed up our speeches with our votes. Let me for a moment refresh the memories of Senators as to what I think was a rather historic fight, as time will prove, in the Eightieth session of Congress, when Democratic representatives, in the main, in the Senate of the United States, from 16 Southern States, offered to the Senate for ratification a compact which would have empowered, with congressional approval, 16 Southern States to establish regional schools of higher education based on the principle of segregation, which they sought to make Federal policy by getting the Senate to approve, if they could, that compact. I make no apology to the American people for leading the fight against that compact on the ground that the compact section of the Constitution did not require the approval of that type of compact. I pointed out in the debate, and I have no fear of successful contradiction on that point, that one of the obvious motivations of that fight was to enable its proponents to get themselves in a position so that when civil-rights legislation involving racial questions in the field of education reached the United States Supreme Court they could point to the Senate of the United States as having placed its stamp of approval on a policy of segregation in higher education in the United States. I have already said, and I now repeat, that I have no intention to interfere with State policy in the field of education, but when the Senators from 16 Southern States sought to have the Senate place its stamp of approval, by way of ratification, on that compact, which had embodied in it the principle of segregation, I had no hesitation in leading the fight against that transgression on what I think is a precious civil right, because never by my vote will I put my stamp of approval on segregation in free public schools in America.

I know something about schools which are attended by all races. I went through the grade school in the city of Madison, Wis., known as the Greenbush School, which was located on the edge of the slum area of Madison, Wis. There attended that school throughout the 8 years I was there boys and girls from all races of that area, many Negro children, many Jewish, Greek, Italian, Polish, indeed attending that school was a cross-section of the great melting pot which America is.

It is difficult by way of self-analysis and introspection to determine how one comes to hold certain views which he entertains on certain social questions, but I am satisfied, as I analyze my own thinking, that the whole background of my constitutional liberalism is to be found in the conditioning and the training and the understanding of democracy I learned in 8 years in the Greenbush School in Madison, Wis.

Never, Mr. President, with my vote will I deny what I think is a precious civil right in this country, the right of any child to go to a public school irrespective of any attempt to discriminate against him because of race, color, or creed. Democracy will never remain strong in America unless we drive from our midst intolerable prejudice against people because of their race, color and creed. I may add that the civil rights principles of the Constitution are on trial before the world today. As I said last night, our attitude in this country in not taking a courageous and forthright forward step to eliminate discriminations practiced against the civil rights guaranteed by the Constitution is developing a hotbed for communism in the United States.

There is not a southern Democrat, there is not a northern Democrat, there is not a Republican in the whole Congress who hates and despises the Communist ideology more than does the junior Senator from Oregon. The way to meet a threat to democracy is to make democracy work so well that the propaganda of the Communists will not mislead or deceive a single American. Many of them are now being deceived, many of them are being misled. Many Americans, I fear far too many, are going to register a protest vote this fall by voting for the third party because of their opinion that we are not putting into effect as rapidly as we should the full guarantees of the Constitution.

Oh, here is a chance, by the passage of this anti-poll-tax bill, which, as I have said, we shall not be able to pass because of the parliamentary tactics of the Democratic side of the aisle—to answer the third party advocates on the question of whether or not we are going to march forward and prohibit further discrimination because of race, color, or creed.

Mr. President, we defeated the attempt to have the United States Senate approve the policy of segregation in higher education in this country. The vote was close, but the fact remains that the major fight against it came from the Republican side of the aisle. I think it is clear from the RECORD that the only effective blow struck in defense of civil rights in the Eightieth Congress was struck by those of us on the Republican side of the aisle who succeeded in preventing the Senate ratification of the compact to which I have referred. Therefore I say to the proponents of civil-rights legislation, that is another bit of evidence of the good faith and the sincerity of purpose of the Republicans in the Congress of the United States in delivering on civil-rights legislation, in backing up their talk with their votes.

Now, for the RECORD, I ask unanimous consent to have printed as a part of my remarks a portion of the final soldier vote law which was enacted in 1942, and which contained an anti-poll-tax provision protecting our men in the armed services from the type of infringement upon suffrage which poll taxes constitute.

The PRESIDENT pro tempore. Is there objection?

There being no objection, the law was ordered to be printed in the RECORD, as follows:

[PUBLIC LAW 712—77TH CONG.]

[CH. 561—2D SESS.]

[H. R. 7416]

An act to provide for a method of voting, in time of war, by members of the land and naval forces absent from the place of their residence

Be it enacted, etc.,

SPECIAL METHOD OF VOTING IN TIME OF WAR

SECTION 1. In time of war, notwithstanding any provision of State law relating to the registration of qualified voters, every individual absent from the place of his residence and serving in the land or naval forces of the United States, including the members of the Army Nurse Corps, the Navy Nurse Corps, the Women's Navy Reserve, and the Women's Army Auxiliary Corps, who is or was eligible to register for and is qualified to vote at any election under the law of the State of his residence, shall be entitled, as provided in this act, to vote for electors of President and Vice President of the United States, United States Senators, and Representatives in Congress.

SEC. 2. No person in military service in time of war shall be required, as a condition of voting in any election for President, Vice President, electors for President or Vice President, or for Senator or Member of the House of Representatives, to pay any poll tax or other tax or make any other payment to any State or political subdivision thereof.

Mr. MORSE. Mr. President, referring again to the Corrupt Practices Act and to the soldier-vote measure, I wish to repeat that both these statutes rest upon the constitutional power to regulate the manner of holding elections no less than do the exemptions which are sought under the pending bill. The Federal Government has the inherent right to "insure its own preservation" for, as pointed out in the dissenting opinion of Justices Brandeis, Clark, and Pitney in *Newberry* v. *United States* (256 U. S. 232, at 281)—

> The election of Senators and Representatives in Congress is a Federal function; whatever the States do in the matter they do under authority derived from the Constitution of the United States. * * * [Any other conclusion] would be to leave the General Government destitute of the means to insure its own preservation without governmental aid from the States, which they might either grant or withhold according to their own will. This would render the Government of the United States something less than supreme in the exercise of its own appropriate powers; a doctrine supposed to have been laid at rest forever by the decisions of this Court in *McCulloch* v. *Maryland* (4 Wheat. 316, 405, et seq.); *Cohens* v. *Virginia* (6 Wheat. 264, 381, 387, 414); and many other decisions in the time of Chief Justice Marshall and since.

It should be recalled that in McCulloch against Maryland, supra, Chief Justice Marshall, that great expounder of our Constitution, had observed—Fourth Wheaton, 316, 424—that—

> No trace is to be found in the Constitution of an intention to create a dependence of the Government of the Union on those of the States for the execution of the great powers assigned to it. Its means are adequate to its ends, and on those means alone was it expected to rely for the accomplishment of its ends. To impose on it the necessity of resorting to means which it cannot control, which another government may furnish or withhold, would render its course precarious, the result of its measures uncertain, and create a dependence on other governments which might disappoint its most important designs, and is incompatible with the language of the Constitution

I apply that language Mr. President, to the power of the Congress, through the enabling clauses to which I have heretofore referred, to pass legislation which will protect the national suffrage of 10,000,000 American people now denied that protection by existing poll-tax laws.

I say, Mr. President, that these quotations from two landmarks in our constitutional history make it abundantly clear that the revisionary power conferred upon the Congress by section 4 of article I of the Constitution, to regulate the "manner of holding elections for Senators and Representatives," was intended to and does authorize the Federal Government to take all steps deemed by it to be necessary and proper to insure that the election of its officers shall conform with true democratic principles; shall be without fraud, corruption, or pernicious political activities attendant upon the exercise by the people of their highest privilege; and that substantial portions of the populace in the several States shall not be disfranchised by a pseudo qualification bearing no reasonable relation to their fitness to vote.

I dwell upon that criterion, Mr. President, because when we do get this matter before the Supreme Court there is no doubt of the fact that it will give an interpretation of the word "qualification," as contained in article I, section 2 of the Constitution, in regard to which the distinguished Senator from Mississippi [Mr. STENNIS] and the distinguished Senator from Virginia [Mr. ROBERTSON], as well as my friend the able Senator from Alabama [Mr. HILL], dwelt at such great length. The court will have to give an interpretation to the word "qualification." What will be its text?

As a lawyer, I suggest that one of the things the court will look into is the relationship between the poll tax and the qualification or capability or ability of a man to vote. Do Senators know what I think the court will say respecting that? Dangerous as predictions are for a lawyer even to suggest in attempting to prophesy a court decision, I think the court will be bound to find that there is no relationship between the poll tax and the ability of a man to vote. I think the court will pierce the veil of sham which the poll tax is, and will not let the States hide behind that veil under the pretext that the poll-tax requirement is a qualification under article I, section 2. To the contrary, I think the court will say that qualification under article I, section 2, has to have some reasonable relationship to the ability to vote if it is to in any way limit the right to vote.

There is no such relationship, I submit, when a poll tax is imposed on an individual under the pretext that it defines his qualifications to vote. I think the court will tear the veil from the face of the poll tax and recognize that the Congress of the United States has the obligation and the power under the Constitution to protect free citizens from that type of restriction upon what ought to be recognized as a guaranty of free suffrage.

Thus I say, Mr. President, that to make sure that there should be no doubt on this score, the framers of our Constitution wisely inserted a "necessary and proper" clause specifically authorizing the Congress, "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers." Under that enabling clause, under the power therein given to preserve the republican form of government, if it were desired to put it on no other basis, I submit that the court would find that the exercise of our power in passing an anti-poll-tax law met all constitutional requirements.

I have already pointed to the fact that 10,000,000 citizens of the United States are disfranchised by the poll-tax requirement and shown that its abolition in Georgia resulted in an immediate and substantial increase in the number of voters who participated in the elections when not hindered and impeded by the poll-tax requirement. Moreover, the difference in the size of the electorate in poll-tax States as compared with that in non-poll-tax States generally, fully demonstrates that the republican form of government contemplated by the Constitution is nonexistent in the poll-tax States.

The report of the President's Committee on Civil Rights at page 38 carries a chart, Suffrage in Poll-Tax States. It shows that of the potential voters who voted in the 1944 Presidential elections, 68.74 percent voted in the then 40 non-poll-tax States while only 18.31 percent voted in the 8 poll-tax States. In 1944 Georgia required the payment of the poll tax, and therefore her statistics are included in the table.

Section 4 of article IV of the Constitution provides:

> The United States shall guarantee to every State in this Union a republican form of government.

It is well settled that questions arising under this clause are political, not judicial, in character, and thus are for consideration of Congress and not the courts. *Ohio ex rel. Bryant* v. *Akron Metropolitan Park District* (281 U. S. 74, 80 (1930)), citing *Pacific States Teleph. Co.* v. *Oregon* (223 U. S. 118 (1912)), *O'Neill* v. *Learner* (239 U. S. 244, 248 (1915)).

I recognize that this is a technical point of law to the layman, and hence, even at the expense of time, I want to reiterate it, because I think it is one of the points that my friends of the opposition have overlooked in their entire discussion of the constitutionality of a proposed anti-poll-tax bill. I said last night, for example, that in my judgment, our power to pass an anti-poll-tax law rests in part under the political powers of the Constitution vested in the Congress. Thus section 4 of article IV of the Constitution, which reads "the United States shall guarantee to every State in this Union a republican form of government" raises what the Court has called a question political in character and not judicial. What does that mean? It means that very broad and wide powers are given to the Congress of the United States to pass legislation which in its judgment is necessary, and which it is empowered to pass under the enabling sections of the Constitution, to protect, preserve, and perpetuate a republican form of government.

I think I can hear the Supreme Court say it is not for the Court to dictate to the Congress of the United States what steps it should take to preserve, perpetuate, and protect a republican form of government, because that is basically a political question which primarily vests in the wise judgment and discretion of the elected representatives of the people. I think I can hear the Court say that, if in the exercise of their wisdom in the legislative branch of government they come to the finding of fact that the existence of a poll tax endangers free suffrage in America, it rests within their political power under section 4, article 4, of the Constitution to pass an anti-poll-tax bill, and by so doing they exercise their right to preserve a republican form of government.

That is an additional premise on top of my premise respecting amendment 15, Mr. President, on which I base my argument that an anti-poll-tax bill would be declared by the Supreme Court to be constitutional. It is not for the Court, as the precedents which I have cited

clearly indicate, by way of judicial action to amend the Constitution by means of an interpretation, by saying that a bill which Congress passed to protect, preserve, and perpetuate a republican form of government is unconstitutional, because if it did, then in a very real sense it would be substituting itself as the legislature, on a question which it has already recognized in its decisions is political and not judicial in character.

Of course, I do not mean that we can pass any sort of legislation we might want to pass under section 4 of article IV of the Constitution. I mean that on this subject, too, the well-established judicial rule of reasonableness will prevail. In my judgment, under this section the Court would have to find that the law we passed was highly capricious and arbitrary, bearing no reasonable relationship whatsoever to the power granted under the section before it would be justified in declaring it to be unconstitutional. I do not believe that the Court could possibly so find in this instance, because, in my humble judgment, the existence of a poll-tax restriction on suffrage which has the effect, as I pointed out in the statistics presented last night, of disfranchising 10,000,000 supposedly free American citizens is a serious threat to the perpetuation of a republican form of government. Therefore I say to my friends who are puzzled—and I can understand their puzzlement—over this constitutional question, that they should reconsider the meaning of section 4, article IV, of the Constitution and refresh their recollections of the decisions which I have cited thereunder. I submit that Congress has the constitutional mandate, as provided in section 8 of article I, to "make all laws which shall be necessary for carrying into execution powers vested by this Constitution in the Government of the United States," to restore a republican form of government to the people of the seven poll-tax States by enacting House bill 29.

The Senate Judiciary Committee, on October 27, 1942, in its report on House bill 1024, which was also an anti-poll-tax bill, practically identical with House bill 29, said the following in its excellent report on the bill:

> Can we have a republican form of government in any State if, within that State, a large portion and perhaps a majority of the citizens residing therein are denied the right to participate in governmental affairs because they are poor? We submit that this would be the result if under section 2, article I, of the Constitution, the proposed law is held to be unconstitutional. The most sacred right in our republican form of government is the right to vote. It is fundamental that that right should not be denied unless there are valid constitutional reasons therefor. It must be exercised freely by free men. If it is not, then we do not have a republican form of government. If we tax this fundamental right, we are taxing a Federal privilege. We might just as well permit the States to tax Federal post offices throughout the United States.

I say that House bill 29 is authorized by the fifteenth amendment to the Constitution. That amendment provides as follows:

> SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.
>
> SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

I pointed out in my comments last night that there is no doubt as to what the purpose was for calling the constitutional conventions in several of the poll-tax States at the time their constitutions were amended in order to put into them a poll-tax provision. A distinguished former Member of this body, the beloved Carter Glass, of Virginia, in the speeches from which I quoted last night, made perfectly clear the purpose in Virginia. When he spoke to the convention in Virginia he made it very clear that the convention had been called to discriminate against approximately 146,000 ignorant Negroes in Virginia. We cannot erase the record of history, and that is what the record of history shows was the dominant motivation which produced the poll-tax laws and the constitutional amendments in the several States which sought to solve the problem by way of a constitutional amendment.

Mr. President, with the passage of an anti-poll-tax bill by the Congress, and thereafter a direct raising of the issue before the United States Supreme Court on the question of the constitutionality of such legislation, I have no doubt as to the inescapable conclusion which the Court must reach; namely, that the power vests in the Congress of the United States to carry out the mandate of amendment XV of the Constitution:

> SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.
>
> SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

I say that a thoroughly prepared case before the Supreme Court on the true meaning of amendment XV can lead to no other decision than the right of the Congress to protect national suffrage of free citizens from the type of restriction and imposition on that basic right which the poll taxes constitute in the States which have them.

Let us take a look at the history of the fifteenth amendment for a moment. This amendment was proposed to the legislatures of the several States by the Fortieth Congress on February 26, 1869, following the dark days of the Civil War. It was declared to have been ratified March 30, 1870. It is not simply a coincidence that shortly after this date the payment of a poll tax as a requirement for voting became a qualification in those States having a large percentage of Negro voters. Tennessee was the first State to adopt the requirement, in 1870; Virginia in 1875.

I digress for a moment to emphasize a point which I think needs to be reemphasized in this debate. We have heard a great deal from members of the opposition about the tax requirements and the property requirements which existed at the time the Constitution was adopted. But we must not lose sight of the fact that the adoption of poll taxes as a restriction on voting, designed definitely and with purpose to prevent certain people from voting, and to disfranchise them, followed the Civil War, subsequent to the adoption and ratification of the fifteenth amendment. They were adopted by the Southern States having a large number of Negro citizens as a way, they thought—and it has worked for a great many years—of getting around the fifteenth amendment. They were adopted in the hope that if and when the issue reached the Supreme Court, they might prevail under an interpretation of the word "qualification," as it is found in article I, section 2. But, Mr. President, as I said last night, we are still waiting for a case squarely on the nose, so that the Court clearly can interpret the meaning of qualification under section 2, article I, in relation to the exercise of Federal power by the Congress to protect national suffrage through the medium of an anti-poll-tax bill. So I say that the issue as to the constitutionality of such a bill cannot now be settled by the Supreme Court, because the Court must have before it a congressional enactment which clearly raises the question whether it infringes on the constitutional power in consideration of the word "qualification" as it appears in section 2, article I. I am not afraid of the result when the Supreme Court is given a chance to render a clear-cut decision on that issue.

That is why I think that, although it is pertinent to discuss the border-line cases on this problem, which thus far have been passed upon by the Supreme Court, they are not binding or sound precedents on the present issue, because the only way we can obtain a decision on the issue is to get it before the Court. But it has not been before the Court, and we shall not get it before the Court until under the fifteenth amendment, we, the Congress, proceed to carry out what I think is the clear mandate of that amendment to see to it that under section 2 of amendment fifteen the necessary laws are passed to protect all free citizens from discrimination or abridgement or denial of their rights on the basis of race, color, or previous condition of servitude.

Mr. President, I rest my argument on this point on the proposition that that is exactly what a poll tax does. It abridges free suffrage. It denies, on a discriminatory basis, on the basis of race, color, or creed, the right of approximately 10,000,000 American citizens to cast a free ballot unless they meet certain highly arbitrary restrictions imposed upon them through a poll tax.

As I was saying, Mr. President, Tennessee was the first State to adopt the requirement, and did so in 1870; Virginia in 1875; Florida, 1885; Mississippi, 1890; Arkansas in 1892; South Carolina in 1895; Louisiana, 1898; North Carolina, 1900; Alabama in 1901; Texas in 1903. It is a long, long way from 1787 to 1903, Mr. President. The Georgia constitutions of 1865 and 1877 made the payment of all taxes a prerequisite to voting in general elections; but in 1908 its constitution was amended so as to make the payment of the poll tax a requirement for voting in the primary election also. This statement appears in the Senate Judiciary Subcommittee Hearings on

Senate bill 1280 in July 1942, at page 253 in the testimony of Henry H. Collins.

Seven of the 11 States which originally had poll taxes still retain their poll-tax requirements. The Negro population of those States alone amounts to 5,449,186 on the basis of the 1940 census. In round figures that is about one-third of the entire Negro population of the United States.

I have already alluded to the findings contained in the report of the Senate Judiciary Committee regarding the original purpose of these poll-tax requirements, namely, to disfranchise Negro citizens. I wish to quote very briefly from the report again, to show that these taxes, at their very inception, violated Federal statutes:

At page 5, the report states:

It ought to be borne in mind also that many, if not all, of these constitutional amendments in the poll-tax States are in direct conflict with the statutes under which these States were readmitted to the Union under the act of Congress of June 26, 1870 (16 Stat., p. 62). The provision which refers to Virginia reads as follows:

"The constitution of Virginia shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote, who are entitled to vote by the constitution herein recognized, except as punishment for such crimes as are now felonies at common law, whereof they have been duly convicted under laws, equally applicable to all the inhabitants of said State: Provided, That any alteration of said constitution, prospective in its effect, may be made in regard to the time and place of residence of voters."

It therefore follows that these State poll tax constitutional amendments were in direct violation of this statute and therefore absolutely unconstitutional.

It seems perfectly plain that the object of this poll-tax provision in the State constitutions was not to prevent discrimination among the citizens but to definitely provide for a discrimination by which hundreds of thousands of citizens were taxed for the privilege of voting.

Mr. President, the principal purpose behind these State poll-tax requirements being the disfranchisement of a large number of Negro citizens, which purpose is today still being achieved, it is submitted that such poll-tax laws are violative of the express language, purpose, and intent of the fifteenth amendment; and the Congress should proceed to eliminate these sham "qualifications" under the specific authority granted it under section 2 of the amendment "to enforce this article by appropriate legislation." *James* v. *Bowman* (190 U. S. 127, 137); *United States* v. *Reese* (92 U. S. 214); *Guinn* v. *United States* (238 U. S. 347).

Chief Justice Marshall, in the celebrated case of McCulloch against Maryland, from which I have already quoted, laid down a basic principle in American constitutional law when he declared that "the power to tax is the power to destroy." States cannot levy or exact a tax on a Federal instrumentality or function. Yet we have the anomalous situation of State governments requiring a tax as a condition to exercising the highest and most basic right in a democratic society—the right to cast a ballot for the President, the Vice President, and Members of the Congress.

Action by the courts is not the only avenue for the redress of this wrong or the only protection against the danger implicit in permitting a State to tax a Federal function. That Congress of its own initiative can enact legislation to safeguard and preserve the structure and very existence of government is a proposition too elementary to require argument. If the States under the guise of setting up a "qualification" for voting, levy a $1 tax on the right of a Federal elector to vote—and I have already shown that certain States through their poll-tax requirements have compelled, and continue to compel, their citizens to spend as much as 2 percent of their annual income in order to vote in Federal elections—what is there to hinder such States from exacting a larger proportion, or, conceivably, to reduce it to the absurd, all the earnings of the prospective voter? If there were no other constitutional basis for the enactment of House bill 29, the implied power of a sovereignty to protect itself from destruction would alone afford ample constitutional authority and justification.

Mr. President, I wish to turn now to the group of cases about which we have heard so much in the very able arguments presented by the Senators of the opposition. First, I think the RECORD should contain at this point a very brief digest of those alleged leading cases. I take such a digest from a report of the Senate Judiciary Committee, after having checked the decisions and read them very carefully and after having satisfied myself that the digest in fact sets forth an accurate thumbnail sketch of the decisions themselves.

First let us turn to *Breedlove* v. *Suttles* (302 U. S. Repts. 277), decided December 6, 1937. The dates are important in this discussion, and I should like my colleagues to keep them in mind. The action was brought to determine whether or not the appellees, State officials, had acted unlawfully or illegally in refusing to register a white man aged 28 to vote for Federal and State officers at primary and general elections, for the reason that he had neither made poll-tax returns nor paid any taxes. The opinion of the Court was perfectly proper, in my opinion, in view of the fact that the appellant demanded that the State official qualify him to vote in a State election as well as a Federal election. But I think the Court arrived at an erroneous conclusion, because it had erroneously judged the nature of the right to vote for a Federal official. The Court thought the nature of the right or the source of the right to vote for a Federal official was the State itself. Surely the State is not the one to grant a Federal privilege. The Court said:

Privilege of voting is not derived from the United States, but is conferred by the State.

In the second case, *Pirtle* v. *Brown* (C. C. A., 6th Ct., 118 Fed. Repts., 2d ed., 218), decided March 8, 1941, certiorari was denied by the Supreme Court. The issue in this case was whether the State could condition a right to vote for a Representative in Congress in an election, not a primary, because the citizen had failed to pay a poll tax. It was not a State election and not a primary, and the citizen had qualified in every way except to pay the tax. The State levied the tax and set up the method of collection. It had experienced difficulty in getting it collected, and burdened the franchise with the duty to pay the tax, as a method of collecting it. It was therefore a condition precedent to the exercise of the right to vote. The Court held that the right to vote in a national election is conditioned upon such terms as the State wants to impose, and, using the Breedlove case as a precedent, about the right conferred by the State, the Court said such right was conferred save as restrained by the fifteenth and nineteenth amendments with respect to race, color, or previous condition of servitude, and other provisions of the Constitution. It was a unanimous opinion by three judges of the circuit court.

The gentlemen of the opposition have laid great stress on the Breedlove and Pirtle cases. If I were in their position and honestly believed, as I am sure they honestly believe, that an anti-poll-tax law is unconstitutional, as a lawyer I certainly would stress for all it is worth their argument on the Breedlove case and on the case of Pirtle against Brown. Those cases are what I call fringe cases. They approach the issue in question, but they are not cases on all fours with the issue we now face.

The first case, as I have pointed out, involves a question in which a State law is mixed up with a Federal election. The second case is a court of appeals case relying upon the Breedlove case, even though the Classic case, which I shall shortly discuss, came in between. It was disposed of in what manner? By denial of a writ of certiorari by the Supreme Court. I think my lawyer friends of the opposition have done a masterful job in creating the impression in this body among some of my colleagues that Pirtle against Brown represents a decision by the United States Supreme Court on the merits of the issues involved. Lawyers know that reasons for denying certiorari rest in the bosom of the Supreme Court. Lawyers know that it is a pretty weak precedent to cite, if all that can be cited in support of their position in a case is the fact that the Supreme Court denied a writ of certiorari. I would be the last in this Chamber to cast any reflection to any degree whatever on the Supreme Court, but it is important that the American people understand the procedure of the Supreme Court. There are many reasons why the Supreme Court may deny certiorari, and it is generally recognized that one of the most common reasons is that because the agenda of the Court is so large, the docket of the Court is so extensive, the mass of cases the Court is called upon to decide in a given term is so great, that the Court must follow a selective process. It has to meet a timetable, and very frequently—and I do not think there can be any denial of this fact—it denies certiorari, not because it does not think the issues involved in a case should in due course of time be litigated, but because the time element does not permit. It follows a selective process in acting upon petitions for writs of certiorari. It is not uncommon at all to have a writ

denied in one term of Court, and to have the identical issue involved in another case at the next session of the Court taken up by the Court by granting a writ in that case. Therefore I am not saying that Pirtle against Brown should not be cited by the gentlemen of the opposition; it should, of course, be cited. It has some weight in the argument. But I am saying that the mere fact that a writ of certiorari was denied in Pirtle against Brown does not constitute a ruling by the United States Supreme Court on the merits of the issue involved in this debate. There will not be a Supreme Court decision on the merits of this great constitutional issue until a congressional act is before the Court in the form of an anti-poll-tax bill seeking to lift the restriction upon the privilege of voting now imposed upon some 10,000,000 citizens by way of a poll tax.

The next case is that of *United States* v. *Classic* (313 U. S. 299), decided May 28, 1941. The gentlemen of the opposition make considerable point of the fact that the denial of a writ of certiorari in the Pirtle case follows the decision in the Classic case. I do not think that is particularly relevant, because the Classic case speaks for itself. I shall not claim and I do not want to claim too much for the Classic case. I may say to my good friends of the opposition, however, that as a lawyer I somewhat enjoyed the speed with which they passed over the Classic case and laid all the emphasis of their argument on the Breedlove and Pirtle cases. That is good lawyer technique. I understand it. I do not want to give any greater emphasis to the Classic case than I honestly think it deserves, but I do want to say, and I do not think the statement can be denied, that so far as concerns the language of the Court in discussing the general merits of the problems before us in this constitutional argument, it is, in fact, the last pronouncement of the Court on the subject, because the mere denial of a writ of certiorari in the Pirtle case did not, in fact, involve any discussion on the part of the Court by way of a decision on the issue itself which confronts us. But the Classic case, like the Breedlove case and the Pirtle case, is still a border-line case, and I claim no more for it than that. As such, however, it is deserving of some attention on the part of my colleagues.

In the Classic case, the charge was that the election officials had violated sections 19 and 20 of the Criminal Code by wilfully ordering and falsely counting and certifying ballots cast in a primary in Louisiana for a Representative in Congress.

The Court said:

> The questions for decision are whether the right of qualified voters to vote in the Louisiana primary and to have their ballots counted is a right "secured by the Constitution" within the meaning of Sections 19 and 20 of the Criminal Code, and whether the acts of the appellees charged in the indictment violate those sections.

Chief Justice Stone, after citing cases, said:

> The right of the people to choose their elective officers is a right established and guaranteed by the Constitution, and, hence, is one secured by it to those citizens, inhabitants of the State, entitled to exercise that right.

He continues:

> While in a loose sense the right to vote for Representatives in Congress is sometimes spoken of as a right derived from the State—

Citing cases—

> this statement is true only in the sense that the States are authorized by the Constitution to legislate on the subject as provided by section 2 of article I, to the extent that Congress has not restricted State action by the exercise of its powers to regulate elections under section 4, and it has some general power under article I, section 8, of the Constitution to make all laws which shall be necessary and proper for carrying into execution the foregoing powers. Section 4 authorizes Congress to regulate the times, places, and manner of electing Representatives.

In *United States* v. *Mumford* (16 Fed. 223) the Court said:

> There is little regarding elections that is not included in the terms "times, places, and manner," and Congress could legislate generally in respect to general elections.

Mr. President, my good friends of the opposition like to talk about the language in the Classic case as being dictum. I do not share their characterization of the language as dictum. I shall not quibble about that; but, nevertheless, the language of Chief Justice Stone in the Classic case is the last formal pronouncement by way of court discussion of the question of the power of Congress in the field of national elections. The opponents of the anti-poll-tax bill may characterize it in any way they want; but they cannot erase it; and the Supreme Court has not, as yet, by any specific language, retracted or repudiated the language of Chief Justice Stone in the Classic case. Note to what he refers. Note his reference to those powers in section 4 of article I and in clause 8, section 18, of article I, which I discussed at some length earlier in my remarks this afternoon. When it comes to tracing the trend of constitutional law under a conception of the Constitution as a dynamic document, do I not think there can be any doubt about the fact that in the Classic case the Court made very clear to the Congress of the United States that there is vested in it a great residual power to pass legislation that will protect free suffrage in the United States.

I should welcome the opportunity, Mr. President, to stand before the Court in support of the constitutionality of an anti-poll-tax law and discuss with the Court its own language in the Classic case. I do not think there is any way the Court could possibly get over, behind, or around that language, and I do not fear that the Court would revoke or reverse the position which it took in the famous Classic case. No, Mr. President, I do not propose in this debate to let my good friends of the opposition forget the Classic case. I know they would like to do it, because I know the language of the Classic case gives them great trouble in their thinking when they seek to sustain what I consider to be a fallacious proposition, that an anti-poll-tax bill would be unconstitutional.

Let us go into the case for a moment, because I think it not only proper and right but very important to have a very full discussion of the Classic case in this debate.

On page 310 of the decision, the Chief Justice said:

> Article I, section 2, of the Constitution commands that "The House of Representatives shall be composed of Members chosen every second year by the people of the several States and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature." By section 4 of the same article, "The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations except as to the places of choosing Senators." Such right as is secured by the Constitution to qualified voters to choose Members of the House of Representatives is thus to be exercised in conformity to the requirements of State law, subject to the restrictions prescribed by section 2 and to the authority conferred on Congress by section 4 to regulate the times, places, and manner—

And manner—

> of holding elections for Representatives.

My good friends of the opposition like to quote the first part of that sentence, and then, with falling voices, skim over the second part. The second part of that sentence also is pregnant with great constitutional meaning, and calls attention to the fact that the right discussed in the first part of the sentence is, however, subject to the right and authority conferred on Congress to regulate the times, places, and manner of holding elections for Representatives.

On page 311 the Chief Justice said in the Classic case:

> Pursuant to the authority given by section 2 of article I of the Constitution and subject to the legislative power of Congress under section 4 of article I and other pertinent provisions of the Constitution, the States are given, and in fact exercise, a wide discretion in the formulation of a system for the choice by the people of Representatives in Congress. In common with many other States, Louisiana has exercised that discretion by setting up machinery for the effective choice of party candidates for Representatives in Congress by primary elections and by its laws it eliminates or seriously restricts the candidacy at the general election of all those who are defeated at the primary. All political parties, which are defined as those that have cast at least 5 percent of the total votes at specified preceding elections, are required to nominate their candidates for Representatives by direct primary elections. (Louisiana Act No. 46, regular session, 1940, secs. 1 and 3.)
>
> The primary is conducted by the State at public expense. (Act 46, supra, sec. 35.) The primary, as is the general election, is subject to numerous statutory regulations as to the time, place and manner of conducting the election, including provisions to insure that the ballots cast at the primary are correctly counted, and the results of the count correctly recorded and certified to the secretary of state, whose duty it is to place the names of the successful candidates of each party on the official ballot. The secretary of state is prohibited from placing on the official ballot the name of any person as a candidate for any political party not nominated in accordance with the provisions of the act. (Act 46, sec. 1.)
>
> One whose name does not appear on the primary ballot, if otherwise eligible to become a candidate at the general election, may do so in either of two ways: by filing nomination papers with the requisite num-

ber of signatures or by having his name "written in" on the ballot on the final election.

Then the Chief Justice proceeds to discuss the Louisiana statute and corresponding constitutional provisions of the State of Louisiana. On page 313 of the decision the Chief Justice proceeds as follows:

The right to vote for a Representative in Congress at the general election is, as a matter of law, thus restricted to the successful party candidate, at the primary, to those not candidates at the primary who file nomination papers, and those whose names may be lawfully written into the ballot by the electors. Even if, as appellees argue, contrary to the decision in *Serpas* v. *Trebucq*, supra, voters may lawfully write into their ballot, cast at the general election, the name of a candidate rejected at the primary and have their ballots counted, the practical operation of the primary law in otherwise excluding from the ballot on the general election the names of candidates rejected at the primary is such as to impose serious restrictions upon the choice of candidates, by the voters, save by voting at the primary election. In fact, as alleged in the indictment, the practical operation of the primary in Louisiana is and has been since the primary election was established in 1900, to secure the election of Democratic primary nominee for the Second Congressional District of Louisiana.

Interference with the right to vote in the congressional primary in the Second Congressional District for the choice of Democratic candidate for Congress is thus, as a matter of law and in fact, an interference with the effective choice of the voters at the only stage of the election procedure when their choice is of significance, since it is at the only stage when such interference could have any practical effect on the ultimate result, the choice of the Congressman to represent the district. The primary in Louisiana is an integral part of the procedure for the popular choice of Congressman. The right of qualified voters to vote at the congressional primary in Louisiana and to have their ballots counted is thus the right to participate in that choice.

Then there follows language which I prophesy here today, Mr. President, will become historic legal language in this great fight for civil rights in the United States because it is language on which I think a powerful argument can be based in the Supreme Court once we pass an anti-poll-tax bill. The Chief Justice said:

We come then to the question whether the right is one secured by the Constitution. Section 2 of article I commands that Congressmen shall be chosen by the people of the several States by electors, the qualifications of which it prescribes. The right of the people to choose, whatever its appropriate constitutional limitations, where in other respects it is defined, and the mode of its exercise is prescribed by State action in conformity to the Constitution, is a right established and guaranteed by the Constitution, and hence is one secured by it to those citizens and inhabitants of the State entitled to exercise the right. * * * See *Hague* v. *CIO* (307 U. S. 496), * * * giving the same interpretation to the like phrase "rights" "secured by the Constitution" appearing in section 1 of the Civil Rights Act of 1871. * * * While in a loose sense the right to vote for Representatives in Congress is sometimes spoken of as a right derived from the States—

Citing cases, including the Breedlove case; and I shall dwell on that citation for a moment.

Sometimes when one picks up a United States Supreme Court decision and reads it, he knows that the Court has omitted reference to a very important case on the same subject matter which had previously been decided by the Supreme Court. This does not happen often but it does happen. The reader is astounded to discover that the case he is reading nowhere mentions the previous case. So as a lawyer he is puzzled; he does not know whether the Court has overruled the previous decision or whether it thinks the present decision is in conformity with the previous decision. In such instances the situation presents to the lawyer advising his clients a very perplexing problem.

The Court here cites the Breedlove case, the case on which the opposition lays so much emphasis, showing perfectly clearly that the Chief Justice had in mind the Breedlove case when he enunciated what I say is historic legal language, because immediately after citing the Breedlove case the Chief Justice said:

This statement is true only in the sense that the States are authorized by the Constitution, to legislate on the subject as provided by section 2 of article I, to the extent that Congress has not restricted State action by the exercise of its powers to regulate elections under section 4 and its more general power under article I, section 8, clause 18 of the Constitution "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers."

Citing cases. No one can argue with me as to whether or not the Supreme Court was cognizant of the Breedlove case when the Chief Justice wrote that historic language. Of course he was cognizant of it. He cited it. I think he made just as clear in that language as he could that the States are not free, under the sham of qualification, to pass any law restricting the right of suffrage they may want to pass. On the contrary, I think the Classic case is ample legal precedent for supporting the argument until such time as the Supreme Court rules directly on the issue when it comes to decide an anti-poll-tax law passed by the Congress, that the right of the State under article I, section 2, is subject to the restrictive rights of the Congress in section 4 and in section 8 of article I.

I go further, Mr. President, and say that it is perfectly clear that this decision can be cited in support of the proposition that the right of the State under article I, section 2, of the Constitution, insofar as qualification is concerned, must be exercised in conformance with and subject to the right of Congress to pass legislation under the other enabling clauses of the Constitution, including amendment 15, protecting the right of suffrage of free Americans from the type of restriction that clearly impinges upon a free ballot box by way of a poll tax.

Senators were talking last night about shooting away at my argument. Shoot all they will, Mr. President, they cannot erase from the Classic case that language of the Supreme Court. Shoot all they will, they cannot cite language from the Supreme Court in a case that retracts the language of the Classic case.

From the standpoint of a legal argument, the only attempt they made—and I respectfully submit it must be classified by lawyers as a feeble attempt—was to cite denial of a writ of certiorari in the Pirtle case. I do not know, and no one else knows, all the factors that entered into the denial of that writ of certiorari. Lawyers who are familiar with the procedure of the United States Supreme Court know that the Court does not have to give any reason for denying certiorari. As we lawyers say, their reasons rest in their own bosoms.

We know it was not so many years ago that the Supreme Court was under severe attack because of the long delay in disposing of its docket. And again I offer no disrespect to the Court when I point out that it is a fact that the denial of writs of certiorari following the public discussion of the condition of the docket of the Supreme Court increased at a very rapid rate. There are those who are of the opinion that the Court, after that criticism, exercised to a greater extent its selective powers in determining what cases it would pass upon in a given term of court, and denied writs of certiorari, possibly as a means of speeding up action on its docket. At least the fact remains that we do not know in a given case, in the absence of any explanation of the Court, the reasons behind a denial of a writ of certiorari, because frequently all we read is "writ denied."

So I say, there stands the language of the Chief Justice of the United States Supreme Court in the Classic case, and I think it is rich with constitutional meaning when we apply it to the constitutional problem before us.

The Chief Justice proceeds on page 315 to say:

Obviously included within the right to choose, secured by the Constitution, is the right of qualified voters within a State to cast their ballots and have them counted at congressional elections. The Court has consistently held that this is a right secured by the Constitution.

Citing cases.

And since the constitutional command is without restriction or limitation, the right, unlike those guaranteed by the fourteenth and fifteenth amendments, is secured against the action of individuals as well as of States.

Citing cases.

But we are now concerned with the question whether the right to choose at a primary election, a candidate for election as Representative, is embraced in the right to choose Representatives secured by article I, section 2. We may assume that the framers of the Constitution, in adopting that section, did not have specifically in mind the selection and elimination of candidates for Congress by the direct primary any more than they contemplated the application of the commerce clause to interstate telephone, telegraph, and wireless communication, which are concededly within it.

But in determining whether a provision of the Constitution applies to a new subject matter, it is of little significance that it is one with which the framers were not familiar. For in setting up an enduring framework of government they undertook to carry out for the indefinite future and in all the vicissitudes of the changing affairs of men, those fundamental purposes which the instrument itself discloses. Hence we read its words, not as we read legislative codes which are subject to continuous revision with the changing course of events, but as the revelation of the great purposes which were intended

to be achieved by the Constitution as a continuing instrument of government.

Citing cases.

That the free choice by the people of representatives in Congress, subject only to the restrictions to be found in sections 2 and 4 of article I and elsewhere in the Constitution, was one of the great purposes of our constitutional scheme of government cannot be doubted.

That is the third time in his decision the Chief Justice points out these restrictions over and above the rights granted in section 2, article I. In his decision the Chief Justice constantly refers to the powers of congressional restriction found elsewhere in the Constitution, including section 4 and section 8, making very clear that section 2, article I, is in fact in the form of words of limitation, as we lawyers say. They are subject to the modifications and restrictions of language qualifying them, to be found elsewhere in the Constitution. They do not confer a blanket right, nor the power to set up any so-called qualification the State wants to; but it is clear in itself, it seems to me, that section 2, article I, must be administered by the States in conformance with the other restrictive clauses of the Constitution, such as amendment 15, which give clear power to the Congress of the United States to pass legislation that will protect suffrage in national elections.

So the Chief Justice says:

Subject only to the restrictions to be found in sections 2 and 4 of article I, and elsewhere in the Constitution, was one of the great purposes of our constitutional scheme of government cannot be doubted. We cannot regard it as any the less constitutional purpose, or its words as any the less guaranteeing the integrity of that choice, when a State, exercising its privilege in the absence of congressional action—

Have we heard the gentlemen of the opposition stress that sentence, Mr. President? I cannot find a word in their speeches about the importance of that sentence. According to my sights on this constitutional question it is very important language. Let me repeat it.

We cannot regard it as any the less the constitutional purpose, or its words as any the less guaranteeing the integrity of that choice, when a State, exercising its privilege in the absence of congressional action, changes the mode of choice from a single step, a general election, to two, of which the first is the choice at a primary of those candidates from whom, as a second step, the representative in Congress is to be chosen at the election.

Nor can we say that that choice which the Constitution protects is restricted to the second step because section 4 of article I, as a means of securing a free choice of representatives by the people, has authorized Congress to regulate the manner of election, without making any mention of primary elections. For we think that the authority of Congress, given by section 4, includes the authority to regulate primary elections when, as in this case, they are a step in the exercise by the people of their choice of representatives in Congress.

Let those of the opposition try to erase that language from the Supreme Court decision. That is the last language which the Supreme Court has handed down on the power of Congress under section 4 of article I of the Constitution. That language is not changed by denial of a writ of certiorari in the Pirtle case. That language is clear notice to the Congress of the United States that section 4 of article I is wealthy in power so far as the right of Congress to take action in protecting the people of the United States in their right of suffrage is concerned. Dictum, is it, Mr. President? Squarely on the nose is that language as to Federal power over primary elections in States, which was one of the questions raised in the Classic case.

The language which I have just read has no semblance of dictum. It is decisive language, bearing upon congressional power under section 4 of article I. A part of my constitutional argument in support of the constitutionality of anti-poll-tax legislation is based upon my contention that, under section 4, Congress has the power vested in it to take the steps necessary to protect national suffrage, which is being imposed upon by poll-tax restrictions under the sham and guise of qualifications in accordance with section 2, article I.

I am not worried about what the Supreme Court will say on this constitutional question, if the opposition will let us get a case before the Supreme Court based upon an actual congressional act prohibiting poll taxes. I think that is a fair proposition. I do not mean that they should vote for an anti-poll-tax bill if they do not believe it to be constitutional, but I do mean that I think it is fair, after they have had their say on their point of view concerning the constitutionality of such legislation, that they give the rest of us, who sincerely believe that it is constitutional, the opportunity to pass it through the Senate and an opportunity then to start it on its way, in accordance with our system of checks and balances in government, to the Supreme Court for final decision.

I do not interpret motives, nor do I assign motives. I simply wish to say that I do not see how there is any escaping the fact that there are many opponents of anti-poll-tax legislation who are not very anxious to have a bill get before the Supreme Court, in view of the language of the Classic case. I have a hunch—and one cannot be blamed for having hunches—that there are a good many opponents of anti-poll-tax legislation who have grave doubt as to whether or not their arguments as to the alleged unconstitutionality of such legislation would survive a Supreme Court test, in view of the language of the Classic case.

The Chief Justice went on, on page 317 in the decision, to say:

The point whether the power conferred by section 4 includes in any circumstances the power to regulate primary elections was reserved in *United States* v. *Gradwell*, supra, 487. In *Newberry* v. *United States*, supra, four Justices of this Court were of opinion that the term "elections" in section 4 of article I did not embrace a primary election, since that procedure was unknown to the framers. A fifth Justice, who with them pronounced the judgment of the Court, was of opinion that a primary, held under a law enacted before the adoption of the seventeenth amendment, for the nomination of candidates for Senator, was not an election, within the meaning of section 4 of article I of the Constitution, presumably because the choice of the primary imposed no legal restrictions on the election of Senators by the State legislatures to which their election had been committed by article I, section 3. The remaining four Justices were of the opinion that a primary election for the choice of candidates for Senator or Representative were elections subject to regulation by Congress within the meaning of section 4 of article I. The question then has not been prejudged by any decision of this Court.

To decide it we turn to the words of the Constitution read in their historical setting as revealing the purpose of its framers, and search for admissible meanings of its words which, in the circumstances of their application, will effectuate those purposes. As we have said, a dominant purpose of section 2, so far as the selection of representatives in Congress is concerned, was to secure to the people the right to choose representatives by the designated electors, that is to say, by some form of election. Compare the seventeenth amendment as to popular election of Senators. From time immemorial an election to public office has been in point of substance no more and no less than the expression by qualified electors of their choice of candidates.

Long before the adoption of the Constitution the form and mode of that expression had changed from time to time. There is no historical warrant for supposing that the framers were under the illusion that the method of effecting the choice of the electors would never change or that, if it did, the change was for that reason to be permitted to defeat the right of the people to choose representatives for Congress which the Constitution had guaranteed. The right to participate in the choice of representatives for Congress includes, as we have said, the right to cast a ballot and to have it counted at the general election, whether for the successful candidate or not. Where the State law has made the primary an integral part of the procedure of choice, or where in fact the primary effectively controls the choice, the right of the elector to have his ballot counted at the primary is likewise included in the right protected by article I, section 2. And this right of participation is protected just as is the right to vote at the election, where the primary is by law made an integral part of the election machinery, whether the voter exercises his right in a party primary which invariably, sometimes or never determines the ultimate choice of the representative. Here, even apart from the circumstance that the Louisiana primary is made by law an integral part of the procedure of choice, the right to choose a representative is in fact controlled by the primary because, as is alleged in the indictment, the choice of candidates at the Democratic primary determines the choice of the elected representative. Moreover, we cannot close our eyes to the fact, already mentioned, that the practical influence of the choice of candidates at the primary may be so great as to affect profoundly the choice at the general election, even though there is no effective legal prohibition upon the rejection at the election of the choice made at the primary, and may thus operate to deprive the voter of his constitutional right of choice.

This was noted and extensively commented upon by the concurring Justices in *Newberry* v. *United States*, supra, 263–269, 285, 287.

Unless the constitutional protection of the integrity of elections extends to primary elections, Congress is left powerless to effect the constitutional purpose.

Note that, Mr. President, because we must not forget that many of the same arguments we have been hearing in opposition to congressional interference, so-called, with State election laws as they relate to poll taxes were made in an attempt to prevent Federal interference,

so-called, into primary elections. That is why this decision of Chief Justice Stone is, in my judgment, so applicable to the issue before us. Of course, it is a fringe case, a borderline case; but, nevertheless, it deals with the interpretation of congressional power over elections, and it recognizes the right of Congress to take a look into procedures that involve primary elections, because the primary elections so frequently determine who the final congressional representative shall be. So Mr. Chief Justice Stone says:

Unless the constitutional protection of the integrity of elections extends to primary elections, Congress is left powerless to effect the constitutional purpose, and the popular choice of representatives is stripped of its constitutional protection save only as Congress, by taking over the control of State elections, may exclude from them the influence of the State primaries. Such an expedient would end that State autonomy with respect to elections which the Constitution contemplated that Congress should be free to leave undisturbed, subject only to such minimum regulation as it should find necessary to insure the freedom and integrity of the choice.

What do you suppose, Mr. President, he means by the use of the words "freedom and integrity of choice"? I think they, at least, are a peg on which to hang an argument that, after all, we do not have freedom of choice and we cannot have integrity of choice, either, when 10,000,000 people find themselves restricted as to their freedom to exercise a free ballot.

Mr. Chief Justice Stone further said:

Words, especially those of a Constitution, are not to be read with such stultifying narrowness. The words of sections 2 and 4 of article I, read in the sense which is plainly permissible and in the light of the constitutional purpose, require us to hold that a primary election which involves a necessary step in the choice of candidates for election as representatives in Congress, and which in the circumstances of this case controls that choice, is an election within the meaning of the constitutional provision and is subject to congressional regulation as to the manner of holding it.

I agree that this case deals with a primary election problem. But I also contend that it deals with the inherent power of the Congress, under section 4 of article I and under the fifteenth amendment, to step in and see to it that the necessary regulations are imposed by Congress to protect free suffrage in any instance in which a State adopts a method or manner of conducting elections which impinges or infringes upon the rights guaranteed by the Constitution as to elections. I do not think we can get away from that point. There is no reversal of that language of the Chief Justice, and it is not dictum. Its language bears directly upon the issue involved in this case.

Chief Justice Stone further said:

Not only does section 4 of article I authorize Congress to regulate the manner of holding elections, but by article I, section 8, clause 18, Congress is given authority "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States or in any department or officer thereof." This provision leaves to the Congress the choice of means by which its constitutional powers are to be carried into execution.

That cannot be erased, and I know of no reversal or retraction of that language. In my judgment, it is a clear notice upon the Congress that this decision by the United States Supreme Court recognizes the power, as I have argued in this debate, of the Congress to enact legislation which will protect the suffrage of free citizens; and it seems to me it recognizes by a clear, logical application of the language of the Court to article I, section 2, that that section contains words of limitation subject to the powers of the Congress over elections, vested elsewhere in the Constitution. That is a part of the very heart of the argument I am trying to make clear. It is a part of the very basis of the argument I would urge upon the Supreme Court if I were pleading the constitutionality of an anti-poll-tax bill before that Court. I think the Court would recognize the applicability of that language to the constitutional issue before us.

So I repeat for purposes of emphasis that Chief Justice Stone said:

This provision leaves to the Congress the choice of means by which its constitutional powers are to be carried into execution. Let the end be legitimate; let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional. *McCulloch* v. *Maryland* (4 Wheat. 316, 421). That principle has been consistently adhered to and liberally applied, and extends to the congressional power by appropriate legislation to safeguard the right of choice by the people of representatives in Congress, secured by section 2 of article I.

Mr. President, I think the excerpts I have read from the opinion of Chief Justice Stone in the famous Classic case lay the basic framework and foundation for my argument that the word qualification in section 2, article I, is a word of limitation, subject to the powers over elections given to the Congress in sections 4 and 8 of article I and also in the fifteenth amendment.

But in the Classic case there is a dissenting opinion, not dealing with the particular points I have been stressing. The dissenting opinion is by Mr. Justice Douglas.

There is certain language in the dissenting opinion which I think is worthy of notice in this debate, recognizing, as I do, of course, that it is the language of a dissenting opinion. The lawyers in the Senate Chamber know that the history of constitutional law in this country is one containing many pages which disclose that the dissenting opinions of one decade frequently become the majority opinions of succeeding decades. Therefore, I think this point of view, at least, of Mr. Justice Douglas as set forth in his opinion in the Classic case should be made a part of my remarks. At page 330 of that case, he said:

The important consideration is that the Constitution should be interpreted broadly so as to give to the representatives of a free people abundant power to deal with all the exigencies of the electoral process. It means that the Constitution should be read so as to give Congress an expansive implied power to place beyond the pale, acts which, in their direct or indirect effect, impair the integrity of congressional elections. For when corruption enters, the election is no longer free, the choice of the people is affected. To hold that Congress is powerless to control these primaries would indeed be a narrow construction of the Constitution, inconsistent with the view that that instrument of government was designed not only for contemporary needs but for the vicissitudes of time.

So I agree with most of the views expressed in the opinion of the Court. And it is with diffidence that I dissent from the result there reached.

The disagreement centers on the meaning of section 19 of the Criminal Code, which protects every right secured by the Constitution. The right to vote at a final congressional election and the right to have one's vote counted in such an election have been held to be protected by section 19 (*Ex parte Yarbrough*, supra; *United States* v. *Mosley* (238 U. S. 383)). Yet I do not think that the principles of those cases should be, or properly can be, extended to primary elections. To sustain this indictment we must so extend them. But when we do, we enter perilous territory.

We enter perilous territory because, as stated in *United States* v. *Gradwell* (243 U. S. 476, 485), there is no common-law offense against the United States; "the legislative authority of the Union must make an act a crime, affix a punishment to it, and declare the court that shall have jurisdiction of the offense" (*United States* v. *Hudson* (7 Cranch 32, 34)).

Thus he proceeded to dissent on the ground of a difference with the majority over an application of section 19 of the Criminal Code, but not on the broad principles laid down by the Chief Justice, which I have cited at considerable length, in regard to the powers of Congress in respect to national elections.

There are other cases I intended to discuss and other authorities to which I contemplated referring, but I have spoken at much greater length than I had any thought I would when I started this discussion. I have laid down at least the major premises on which I rest my constitutional argument. With the permission of the Senate, rather than take the time of the Senate to cite the further authorities, I ask to insert as part of my remarks certain material which I shall describe.

First, for review purposes, I should like to have inserted at this point in my remarks the digests to which I have referred, dealing with the Breedlove case, the Pirtle case, the Classic case, and the Edwards case, the so-called California "Okie" case.

The PRESIDING OFFICER (Mr. BALDWIN in the chair). Is there objection?

There being no objection, the digests were ordered to be printed in the RECORD, as follows:

CONSTITUTIONALITY

1. *Breedlove* v. *Suttles* (302 U. S. 277), decided December 6, 1937: This action was brought to determine whether or not the appellees, the State officials, had acted unlawfully or illegally by refusing to register a white man aged 28 for voting for Federal and State officers at primary and general elections because he had made neither poll-tax returns nor paid any poll taxes. The opinion of the Court was perfectly proper in view of the fact that the appellant demanded the State official to qualify him to vote in a State election as well as a Federal election.

The Court arrived at this erroneous conclusion because it had erroneously judged the nature of the right to vote for Federal officials. The Court thought the nature of the right or the source of the right for a Federal official was the State itself. Surely, the State is not the one to grant a Federal privilege. The Court said "Privilege of voting is not derived from the United States, but is conferred by the State."

2. *Pirtle* v. *Brown* (C. C. A., 6th Ct. (118 Fed. (2d) 218)), decided March 8, 1941, and certiorari denied by the Supreme Court: The issue in this case was whether the State could condition a right to vote for a Congressman in an election, not a primary, because the citizen had not complied, or had failed to pay a poll tax. It was not a State election and not a primary and the citizen had qualified in every way except pay the tax. The State levied the tax and set up the method of collection, having had difficulty in getting it collected, they burdened the franchise with the duty to pay the tax, as a method of collecting. It was therefore a condition precedent to the exercise of the right to vote. The court held that the right to vote in a national election is conditioned on such terms as the State wants to impose, and using the Breedlove case as a precedent about the right conferred by the State, said such right was conferred save as restrained by the fifteenth and nineteenth amendments on race, color, or previous condition of servitude and other provisions of the Constitution. (Unanimous opinion of three judges.)

3. *United States* v. *Classic* (313 U. S. 299), decided May 28, 1941: In this case the charge was that election officials had violated sections 19 and 20 of the Criminal Code by wilfully altering and falsely counting and certifying the ballots cast in a primary in Louisiana for a Representative of Congress. The questions for decision were whether the rights of qualified voters to vote in Louisiana and to have their ballots counted is a right secured by the Constitution and whether the appellees violated the sections of the code. Stone said, after citing cases going back to *Ex parte Yarbrough* (110 U. S. 651) that the right of the people to choose their elective officers is a right "established and guaranteed by the Constitution and hence is one secured by it to those citizens and inhabitants of the State entitled to exercise the right."

He continued: "While, in a loose sense, the right to vote for Representatives in Congress is sometimes spoken of as a right derived from the States (cites cases), this statement is true only in the sense that the States are authorized by the Constitution to legislate on the subject as provided by section 2 of article I, to the extent that Congress has not restricted State action by the exercise of its powers to regulate elections under section 4 and its more general power under article I, section 8, clause 18, of the Constitution, 'to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.'"

Section 4 authorizes Congress to regulate the times, places, and manner of electing representatives in *United States* v. *Mumford* (16 Fed. 223, C. C., Virginia, 1883).

The Court said there is little regarding an election that is not included in the terms "time," "place," and "manner" and that Congress could legislate generally in respect to general elections.

In the Classic case, Justice Douglas went further on to say: "The important consideration is that the Constitution should be interpreted broadly so as to give the representatives of a free people abundant power to deal with all the exigencies of the electoral process. It means that the Constitution should be read so as to give Congress an expansive implied power to put beyond the pale, acts which in their direct or indirect effect, impair the integrity of congressional elections.

In the California "Okie" case, Justice Jackson in a concurring opinion (*Edwards* v. *California* (314 U. S. 181)): "We should say now, and in no uncertain terms that a man's mere property status, without more, cannot be used by a State to test, qualify, or limit his rights as a citizen of the United States."

The Breedlove case does not distinguish between rights of citizens as State or Federal electors, and the Pittle case is an effort to strike down the poll-tax restriction in Federal elections by judicial reasoning without the exercise of Congress of its power to regulate such elections.

In the Classic case Douglas went on to say that sections 2 and 4 of article I are an arsenal of power ample to protect congressional elections from any and all forms of pollution.

Mr. MORSE. Then, after only a brief mention of it, I shall ask shortly to have inserted in the RECORD certain arguments in support of the constitutionality of the anti-poll-tax bill as submitted by some unquestionably outstanding authorities on constitutional law, in a memorandum entitled "The Case for the Constitutionality of the Pepper Anti-Poll-Tax Bill." I am not offering it as yet. I want first to describe it, if I may. The introduction of the pamphlet reads as follows:

INTRODUCTION

Too often constitutional questions are raised simply to obstruct or delay. In consequence many laymen have come to regard them with impatience as the occasion for a lawyer's game of matching precedents with little relation to actualities. When those who discuss such questions remember that the Constitution primarily embodies great principles of government, that it is indeed "a charter and not a document," constitutional issues assume a new importance. To discuss them in the light of history and political philosophy as well as of the law as formulated by the courts results not only in a more just understanding of the particular issue but also in a quickened sense of the meaning and value of our scheme of government. Such a discussion is of value to lawyers and laymen alike.

It is in the spirit of broad statesmanship that the supporters of the constitutionality of the Pepper anti-poll-tax bill have discussed the specific constitutional questions propounded to them by the Senate committee in charge of that bill. These questions are framed in narrow terms, but no satisfactory answer could be found without consideration of the history of the Constitution and the political philosophy of its founders.

The Pepper bill itself (S. 1280), the constitutional questions posed by the commitee, and the three principal statements in answer to those questions are printed in this pamphlet. The first statement is a memorandum, purposely brief, signed by 10 outstanding legal scholars, 6 of them connected with the poll-tax States either by birth and education or by recent affiliation. These signers are George Gordon Battle, of North Carolina and Virginia, long the leading southern member of the New York bar; Walton Hamilton, of Tennessee, now professor of constitutional law in the Yale Law School; Myres McDougal, of Mississippi, also of the Yale Law School; Leon Greene, of Louisiana and Texas, now dean of Northwestern University Law School; Robert K. Wettach and M. T. Van Hecke, dean and ex-dean of the law school of the University of North Carolina; Lloyd K. Garrison, dean of Wisconsin Law School; Charles Bunn, of the Wisconsin Law School faculty; Walter Gellorn, of Columbia University Law School; and Edwin Borchard, specialist in public law and professor in the Yale Law School.

The statement of Irving Brant is that of an outstanding student of the Constitution, who is also a political philosopher. Mr. Brant is the author of Storm Over the Constitution.

Mr. Morrison, the author of the third statement, has long been professor of constitutional law in Tulane University, and is now a practicing lawyer in New Orleans. Like Mr. Brant, he makes use of constitutional history in his statement, but uses it as the constitutional lawyer rather than the political philosopher. Because his statement will appear in full in the Lawyers Guild Quarterly it has been somewhat abridged for printing in this pamphlet, but no alteration of the meaning has been made.

These three statements all reach the same conclusion, but their authors travel different roads, and so their arguments supplement and strengthen each other. They constitute an important contribution to the understanding of the meaning of the Constitution, and of the plan of our forefathers in establishing a republican form of government.

These statements are in answer to a series of questions which the distinguished Senator from Wyoming [Mr. O'MAHONEY], then chairman of a subcommittee of the Committee on the Judiciary, propounded at the Judiciary Committee hearings on the so-called Pepper anti-poll-tax bill. I simply want to read the questions, because they show that the papers presented in answer to the questions bear directly on the great issue of this debate; namely, the constitutionality or unconstitutionality of the anti-poll-tax bill.

The first question the Senator from Wyoming [Mr. O'MAHONEY] propounded to these gentlemen was this:

Whether or not the drafters of the Constitution adopted, for the Federal election of the House of Representatives, the qualifications that might be laid down, whatever they were, by the legislatures of the several States.

The second query was:

Does this section recognize the right of the separate States to fix the qualifications of the electors by failure to make any reference whatsoever to those qualifications?

The third query was:

Does this justify the inference that again the right to fix the qualifications of the voters is a State right?

The next query was:

Is this not tantamount to acknowledgment by the Congress and by the States, when the nineteenth amendment was submitted and approved, that the fourteenth amendment did not prohibit the States from denying or abridging the right to vote?

And then, the next question that arises is, whether since there are only eight States which now have the poll-tax requirement, the object sought by this bill might not more effectively be attained by a constitutional amendment which should provide that the right of citizens of the United States to vote shall not be denied or abridged by the United States or any State on account of any property qualification or poll-tax requirement?

Mr. President, these legal scholars, recognized authorities in the field of constitutional law, wrote answers, in the three memoranda which comprise this pamphlet, to the questions which the Senator from Wyoming put to them, and I ask unanimous consent to have the contents of the pamphlet printed at this point in the RECORD as a part of my remarks.

There being no objection, the pamphlet was ordered to be printed in the RECORD, as follows:

THE CASE FOR THE CONSTITUTIONALITY OF THE PEPPER ANTI-POLL-TAX BILL

[77th Cong., 1st sess.; S. 1280; in the Senate of the United States, March 31, 1941, Mr. PEPPER introduced the following bill; which was read twice and referred to the Committee on the Judiciary]

A bill concerning the qualification of voters or electors within the meaning of section 2, article I, of the Constitution, making unlawful the requirement for the payment of a poll tax as a prerequisite to voting in a primary or general election for national offices

Whereas the requirements in many jurisdictions that a poll tax be paid as a prerequisite for voting or registering to vote at primaries or elections for President, Vice President, electors for President or Vice President, or for Senator or Member of the House of Representatives, have deprived many citizens of the right and privilege of voting as guaranteed to them under the Constitution, and have been detrimental to the integrity of the ballot in that frequently such taxes have been paid for the voters by other persons as an inducement for voting for certain candidates; and

Whereas these requirements have no reasonable relation to the residence, intelligence, ability, character [education, maturity, community-consciousness, freedom from crime], or other qualifications of voters; and

Whereas such requirements deprive many citizens of the right and privilege of voting for national officers, and cause, induce, and abet practices and methods in respect to the holding of primaries and elections detrimental to the proper selection of persons for national offices: Now therefore

Be it enacted, etc., That the requirement that a poll tax be paid as a prerequisite to voting or registering to vote at primaries or elections for President, Vice President, electors for President or Vice President, or for Senator or Member of the House of Representatives, is not and shall not be deemed a qualification of voters or electors voting or registering to vote at primaries or elections for said offices, within the meaning of section 2 of article I, of the Constitution, but is and shall be deemed an interference with the manner of holding primaries and elections for said national offices and a tax upon the right or privilege of voting for said national offices.

SEC. 2. It shall be unlawful for any State, municipality, or other government or governmental subdivision to prevent any person from voting or registering to vote in any primary or election for President, Vice President, electors for President or Vice President, or for Senator or Member of the House of Representatives, on the ground that such person has not paid a poll tax, and any such requirement shall be invalid and void insofar as it purports to disqualify any person otherwise qualified to vote in such primary or election. No State, municipality, or other government or governmental subdivision shall levy a poll tax or any other tax on the right or privilege of voting in such primary or election, and any such tax shall be invalid and void insofar as it purports to disqualify any person otherwise qualified from voting at such primary or election.

SEC. 3. It shall be unlawful for any State, municipality, or other government or governmental subdivision to interfere with the manner of selecting persons for national office by requiring the payment of a poll tax as a prerequisite for voting or registering to vote in any primary or election for President, Vice President, electors for President or Vice President, or for Senator or Member of the House of Representatives, and any such requirement shall be invalid and void.

SEC. 4. It shall be unlawful for any person, whether or not acting under the cover of authority of the laws of any State or subdivision thereof, to require the payment of a poll tax as a prerequisite for voting or registering to vote in any primary or election for President, Vice President, electors for President or Vice President, or for Senator or Member of the House of Representatives.

UNITED STATES SENATE,
COMMITTEE OF THE
COMMITTEE ON THE JUDICIARY,
Washington, D. C., March 13, 1942.

Senator O'MAHONEY. The fact that you have presented this memorandum on the constitutional question, and the fact that I have discussed this matter on numerous occasions with Senator PEPPER, the sponsor of the bill, prompts me to take advantage of this opportunity to pose the constitutional questions that seem to appear to some of the members of the committee, in the hope that those witnesses who, hereafter, undertake to testify upon constitutional questions, will endeavor to answer these questions.

Now, the bill, itself, shows on its face a question of the interpretation of section 2, article I, which has arisen in the minds of the sponsors, as well as in the minds of the committee. Now, this provision of the Constitution reads as follows:

"The House of Representatives shall be composed of Members chosen every second year by the people of the several States and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature."

It is obvious, from the language, that the drafters of the Constitution, in providing in this clause the qualification of those who should choose the Members of the House of Representatives, said, in so many words, that these electors should have the qualifications requisite for the elector of the most numerous branch of the State legislature.

The query is this: Whether or not the drafters of the Constitution adopted, for the Federal election of the House of Representatives, the qualifications that might be laid down, whatever they were, by the legislatures of the several States.

Now, the next section of moment there is section 4, of article I, which reads as follows:

"Time, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof, but the Congress may, at any time, by law, make or alter such regulations except as to the places of choosing Senators."

It would seem to be clear, from this provision, that the drafters of the Constitution recognized the right of the respective State legislatures to fix the time, places, and manner of holding elections, but reserved to the Congress the right by law, to make or alter such regulation except as to places of choosing electors.

Query: Does this section recognize the right of the separate States to fix the qualifications of the electors by failure to make any reference whatsoever to those qualifications?

Then we come to article II, section 1, second clause:

"Each State shall appoint in such manner as the legislature thereof may direct, a number of electors equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress, et cetera," the electors spoken of, of course, being Presidential electors, and it was recognized by the drafters of the Constitution that the legislatures of the respective States have complete authority to direct the manner of election of such presidential electors.

Query: Does this justify the inference that again the right to fix the qualifications of the voters is a State right?

Then, I am prompted to call attention to the fourteenth amendment and to the nineteenth amendment, both of which have already been mentioned in this testimony this morning.

The portion of the fourteenth amendment which seems to be of significance is this:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

Obviously, this provision has the effect of making all native-born or naturalized persons in the United States citizens of the United States, and of the State wherein they reside.

The question, then, arises as to whether or not the next sentence, which raises a prohibition upon the State, and prevents the State from abridging the privilege or immunity of the citizens, whether that is a prohibition upon the State to make a property qualification or a poll-tax qualification as the basis of the right to vote.

In construing this, the question will arise whether the nineteenth amendment does not have a bearing, because the nineteenth amendment, which was adopted many years after the fourteenth amendment, reads:

"The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex."

Query: Is this not tantamount to acknowledgment, by the Congress and by the States, when the nineteenth amendment was submitted and approved, that the fourteenth amendment did not prohibit the States from denying or abridging the right to vote?

And then, the next question that arises is, whether, since there are only eight States which now have the poll-tax requirement, the object sought by this bill might not more effectively be attained by a constitutional amendment which should provide that the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of any property qualification or poll-tax requirement?

I leave that to the constitutional experts.

Dr. RICE. As to that last question raised, I can only say, momentarily, that the history of child-labor protection is perhaps a nice parallel. Congress tried to prevent child labor by two specific acts, both of which were held to be unconstitutional, and then a constitutional amendment was proposed which never received sufficient strength and finally Congress ratified a bill which has gone into effect.

Senator O'MAHONEY. In other words, the Constitution occasionally is flexible?

Dr. RICE. The Constitution grows.

Senator O'MAHONEY. The committee will be in recess until tomorrow morning at 10:30 o'clock.

Whereupon, at 12:30 o'clock p. m., the committee recessed until 10:30 o'clock the following morning, Saturday, March 14, 1942.

MEMORANDUM

This memorandum is directed to answering briefly certain questions affecting the constitutionality of S. 1280, a bill to eliminate poll-tax requirements in Federal elections. The question as raised by the chairman of the subcommittee of the Senate Judiciary considering the bill, are appended hereto. In answering these questions, this memorandum deliberately avoids discussion of controversial points not essential to the determination of the constitutionality of S. 1280.

Query 1. "Whether or not the drafters of the Constitution adopted, for the Federal election of the House of Representatives, the qualifications that might be laid down, whatever they were, by the legislatures of the several States."

The answer is "yes"; but such an affirmative reply leaves unresolved the crucial issues.

The basic issue is not whether the States have power to prescribe the qualifications for the Federal suffrage. The Constitution provides that to vote in congressional elections the voters shall have "the qualifications requisite for electors of the most numerous branch of the State legislature." The basic question is whether the payment of a poll tax is a "qualification" for voting in the constitutional sense.

The Constitution looks to the substance and not to the form. Cf. *Nixon* v. *Condon* (286 U. S. 73). The Constitution does not authorize the States, under the guise of prescribing voting qualifications, to impose, contrary to the laws of Congress regulating Federal elections, restrictions on the Federal franchise that have no reasonable relation to a citizen's qualification to vote. If the payment of a poll tax has no rational relationship to the citizen's capacity to participate in the choice of public officials, it need not be treated by the Congress as a qualification within the meaning of the Constitution. A poll-tax requirement imposes a restriction on the citizen's right to vote, but if it is not a qualification in the constitutional sense, then it is within the power of Congress in regulating Federal elections to override such a restriction on the right of a qualified citizen to vote. As Justice (now Chief Justice) Stone stated in *United States* v. *Classic* (313 U. S. 299, 315), "While, in a loose sense, the right to vote for representatives in Congress is sometimes spoken of as a right derived from the States (citing cases), this statement is true only in the sense that the States are authorized by the Constitution, to legislate on the subject as provided by section 2 of article I, to the extent that Congress has not restricted State action by the exercise of its powers to regulate elections under section 4 and its more general power under article I, section 8, clause 18, of the Constitution 'to make all laws which shall be necessary and proper for carrying into execution the foregoing powers.'"

In *Edwards* v. *California* (314 U. S. 181), the Supreme Court unanimously held that a State could not deny entry to a citizen of the United States merely because he was indigent. The majority of the Court resting their decision upon the commerce clause rejected the suggestion that the State police power could be exercised, as California had attempted to exercise it, to discriminate against citizens because of their indigence. Four of the Justices were of the opinion that, apart from the commerce clause, such discrimination was in violation of the rights of national citizenship as guaranteed both under the original Constitution and the privileges and immunities clause of the fourteenth amendment. One of them, Mr. Justice Jackson, in his concurring opinion, stated broadly (314 U. S. 181, 184–5):

"We should say now, and in no uncertain terms that a man's mere property status, without more, cannot be used by a State to test, qualify, or limit his rights as a citizen of the United States. * * * The mere state of being without funds is a neutral fact—constitutionally an irrelevance, like race, creed, or color. I agree with what I understand to be the holding of the Court that cases which may indicate the contrary are overruled." Whatever might have been true in times past, there is no doubt a serious question today how far property may properly be regarded as a reliable index of or even a rough and ready guide for determining the educational qualification, civic worth, or community loyalty of the citizen.

But a poll-tax requirement clearly has much less relationship to a citizen's capacity to perform the civic responsibility of voting than has a property test. The most shiftless of men may pay the tax because he found a $5 bill upon the street. The worthiest citizen may prefer to feed his family. In truth it is difficult today to establish any real or substantial relationship between the poll-tax requirement and the civic worth or capacity of the citizen. Until the Congress acts, the courts may hesitate to disturb State electoral practices because of their own views of the logical requirements of the Constitution. But any such hesitancy upon the part of the courts to upset State practices of doubtful constitutionality would be dispelled by congressional action. It would seem clear, therefore, that the poll-tax requirement need not be regarded by the Congress as an electoral qualification within the meaning of the Constitution giving the States the power to fix qualifications for the Federal suffrage, cf. *Breedlove* v. *Suttles* (312 U. S. 277).

The Congress has affirmative power to regulate Federal elections to protect the rights of citizens under the Constitution and to guard against fraud and corruption in the exercise of the Federal franchise. The right of citizens to vote at congressional elections, subject only to such limitations as may be legally imposed by the State or Federal Government in conformity with the Constitution, is a right secured by the Constitution, which the Congress is empowered to protect by appropriate legislation. (*United States* v. *Classic* (313 U. S. 299, 314–315, 320).) Otherwise the rights of qualified voters could be set at naught. Assuming that certain restrictions on the suffrage which are not genuine qualifications in the constitutional sense may be imposed by the States in the absence of congressional action, such restrictions do not escape the Federal power to preserve the integrity of Federal elections and to protect the rights of constitutionally qualified voters. In the exercise of its powers over Federal elections, it is altogether fitting and proper for the Congress to prohibit State poll-tax requirements if in the judgment of the Congress such requirements unduly restrict the rights of national citizenship and make for fraud and corruption in Federal elections.

It is unnecessary to consider in this memorandum whether the State poll taxes are invalid in the absence of Federal legislation on the ground that they violate the rights of national citizenship secured by the original Constitution or by the fourteenth amendment. It is sufficient to affirm the power of the Congress to nullify such State statutes in the exercise of its power to regulate Federal elections and to protect the rights of constitutionally qualified voters. It is sufficient to affirm that should the Congress exercise its power in the premises, the courts in our judgment would sustain and uphold the action of the Congress.

Query 2. "Does this section (art. I, sec. 4) recognize the right of the separate States to fix the qualifications of the electors by failure to make any reference whatsoever to those qualifications."

Answer: We may assume an affirmative answer to this query. The power of the States to fix qualifications, however, is limited, as explained in our answer to query 1, by (1) the inherent meaning of the word "qualifications" as used in the Constitution, and (2) the power of Congress to protect the integrity of Federal elections and the rights of constitutionally qualified voters.

Query 3. Relates to article II, section 1, clause 2 of the Constitution which provides that "Each State shall appoint in such manner as the legislature thereof may direct" the presidential electors.

While Congress could not question the right of a State legislature to provide the manner of appointment of Presidential electors, a State legislature in exercising that right must exercise it in conformity with the requirements of the Constitution. If the legislature provides for the appointment to be made by the process of election, that election, like a primary election for congressional candidates, "involves a necessary step in the choice of candidates" for national office "which in the circumstances of this case controls that choice" (*United States* v. *Classic* (313 U. S. 299, 320)), and that choice must be made in a manner that does not offend the Constitution or such legislation as the Congress may reasonably deem appropriate to protect the rights of constitutionally qualified voters from discrimination and invasion. Article II, section 1, clause 2 of the Constitution does not authorize the State legislature to fix arbitrary conditions to the right to vote for Presidential electors which have no relation to the voter's worth or ability.

Query 4. Relates to the privileges and immunities clause of the fourteenth amendment; and to the effect of the nineteenth amendment upon its interpretation.

Answer: The right of a qualified voter to vote subject to the limitations imposed by the Constitution, is a right secured by the Constitution itself prior to the adoption of the fourteenth amendment, and that right may be protected by appropriate congressional legislation (*United States* v. *Classic* (313 U. S. 299, 315, 320)). That right has only been fortified and strengthened by the privileges and immunities clause of the fourteenth amendment. The imposition by the States of proper qualifications for voting does not abridge the rights of national citizenship, either under the original Constitution or the fourteenth amendment. But restrictions which are not qualifications in the constitutional sense cannot survive congressional action to protect the rights of national citizenship under the original Constitution or the fourteenth amendment. It is unnecessary to consider whether a poll-tax requirement or a property test is invalid under the Constitution or the fourteenth amendment in the absence of Federal legislation.

The nineteenth amendment merely took note of the fact that sex was historically recognized as an appropriate qualification. It decreed that thereafter the right to vote should not be denied on account of sex either by the United States or by the States. It applied to State as well as Federal suffrage. It certainly throws no light on whether a State poll-tax requirement should be regarded by the Congress as a qualification in the constitutional sense for voting at a Federal election. The nineteenth amendment, which was designed to broaden the suffrage, certainly was not intended to take away any power the Congress might otherwise have to protect the rights of national citizenship.

If the poll tax is not a legitimate qualification for the Federal suffrage in the constitutional sense, the Congress has the power to eliminate it and protect the rights of national citizenship. A constitutional amendment is not necessary to achieve a result within the existing power of the Congress.

George Gordon Battle, Walton Hamilton, Myres S. McDougal, Leon Greene, M. T. Van Hecke, Robert K. Wettach, Lloyd K. Garrison, Edwin Borchard, Walter Gellhorn, Charles Bunn.

STATEMENT OF IRVING BRANT ON THE CONSTITUTIONALITY OF S. 1280, BEFORE SENATE SUBCOMMITTEE, JULY 30, 1942

The poll tax, employed as a restriction upon the right of suffrage, directly violates two provisions of the Constitution and comes within the regulatory powers of Congress under three other provisions.

It violates and can be abolished by Congress under article IV, section 4, which says that "the United States shall guarantee to every State in this Union a republican form of government."

It violates and can be abolished by Congress under the Fourteenth Amendment,

which says that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

It comes within the regulatory powers of Congress, and can be abolished, through the combined effect of article I, section 2, and the 18th clause of article I, section 8. The original jurisdiction arises from section 2, which says that in the election of the House of Representatives, "the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature."

It comes within the regulatory powers of Congress, and can be abolished, under article I, section 4, which gives Congress power to regulate the "time, places, and manner" of electing Members of Congress.

All of these clauses have back of them the broad authority of the eighteenth clause of article I, section 8, which empowers Congress to make all laws which shall be necessary and proper for carrying into execution the powers vested in the Government of the United States. From that eighteenth clause Congress also derives independent power of legislation to protect the Federal Government in its constitutional independence and supremacy. That would include the power to control Federal elections.

To pursue this last point first, the Federal Government, by the terms of the Constitution, is a republican government, a government of the people, and a supreme government in all that comes within its scope. This carries with it, implemented by the "necessary and proper" clause, the right of the Federal Government to insure its own perpetuation, its independence of State control, its supremacy over the States in Federal affairs, and its status as a government of the people of the United States. If the Constitution did not contain a single word on the subject of congressional elections Congress would have plenary power to regulate them as a part of the implied power of a supreme government to maintain its supremacy, of an independent government to maintain its independence, of a republican government to maintain its republicanism.

However, it is not necessary to rely on this implication. The election of Members of Congress is specifically made a Federal matter by sections 2 and 4 of article I—section 2 setting up the qualifications of electors, section 4 regulating elections.

Article I, section 2, bears upon S. 1280 in two respects, first as to the nature of governmental power over Federal elections, whether it is primarily a Federal power or a State power; second, as to the scope and meaning of the proviso that congressional electors shall have the same qualifications as electors of the most numerous branch of the State legislatures.

It has been argued, by opponents of S. 1280, that because of the way congressional electors are defined the fixing of their qualifications is a State right and that any intervention of the Federal Government in that field is a Federal interference with a right of the States. To show the fallacy of that argument, we need but ask from what source the States derive this supposed right. It stems entirely from the Federal Constitution. Therefore it is not a State right at all, but a use by the Federal Government, for Federal purposes, of certain State electoral machinery. This has been the ruling of the United States Supreme Court and it was the opinion of those who wrote the Constitution. James Madison made it clear in No. 52 of the Federalist when he said:

"The definition of the right of suffrage is very justly regarded as a fundamental article of republican government. It was incumbent on the convention, therefore, to define and establish this right in the Constitution."

In the Newberry case Chief Justice White called sections 2 and 3 of article I "reservoirs of vital Federal power constituting the generative sources of the powers of section 4," and Justice Pitney, agreeing on this point in his dissent from the decision, declared for himself and Justices Brandeis and Clarke: "For the election of Senators and Representatives in Congress is a Federal function; whatever the States do in the matter they do under authority derived from the Constitution of the United States." The same position was taken by Chief Justice Stone for the majority, and Justice Douglas for the minority, in *U. S.* v. *Classic* (decided in 1941).

Section 2, therefore, does not appear in the Constitution as a State right to define Federal electors, but as a definition and establishment of a Federal right in terms of State law. When Madison discussed this subject in 1787, he had no fear of the effect of it. "It cannot be feared," he wrote in Federalist 52, "that the people of the States will alter this part of their constitutions in such a manner as to abridge the rights secured to them by the Federal Constitution." Madison misjudged the future, but in the very act of expressing his mistaken belief that the rights of State citizenship would not be abridged by the States, he made it plain that misuse of section 2 by the States would be an abridgement of Federal citizenship. Thus, at the very dawn of consitutional history, we have an answer to the question which next presents itself—whether, having defined a Federal electorate in terms of a State electorate, the Federal Government is bound to accept anything, no matter what its nature, that a State chooses to call a qualification for voting.

The answer to that must be "no," for three reasons:

1. Any other answer would imply that the Constitution is not an organic whole, but that one section of it can be lifted out and interpreted without regard to any other section or to the general nature of the entire law.

2. The mere fact of placing an affirmative clause in the Constitution gives the Federal Government the power and duty of policing that clause, to see that it is obeyed in accordance with its true substance and purpose as a part of the fundamental law.

3. In the understanding of any law, words must be given their true meaning. A qualification for voting is not simply the ability to dodge an arbitrary or unnatural disqualification. It must bear some reasonable relationship to the purpose for which electoral qualifications are set up. It must be a test of fitness harmonizing with American principles of government and bearing a living relationship to the period in which it is in vogue.

That brings us to the specific question whether the States, in restraining the right of suffrage by means of a poll-tax requirement, have set up a qualification for electors within the meaning and purpose of article I, section 2; and, furthermore, whether such a restraint upon suffrage comes within the power of Congress under other provisions of the Constitution.

What did the framers of the Constitution have in mind when they drafted article I, section 2? Did they intend to establish a broad and democratic base for the election of representatives, or a narrow and aristocratic base? Or did they simply turn the matter over to the States with no thought of what the States might do?

You will notice, first, that this section accepts the qualifications of the "most numerous" branch of the State legislature. The reason for that was that in some of the States a broader right of suffrage existed in the election of the larger house of the legislature than of the smaller. In this distinction, the larger body stood for the rights of the people, the smaller for the rights of property. These words were put into the Constitution, therefore, to insure a broad suffrage for the maintenance of popular rights by the House of Representatives, while the Senate, chosen by State legislatures, was expected to have more regard for property rights.

The popular intent in framing section 2 was further emphasized by the fact that in the process of adopting this clause, the framers of the Constitution voted down a motion to limit the right of voting to freeholders of land. The recorded debate shows that the purpose and expected result was to broaden the right of suffrage for all time. James McHenry read this section of the Constitution to the Maryland Legislature on November 29, 1787. This is what he said about it:

"It was objected that if the qualifications of the electors were the same as in the State governments, it would involve in the Federal system all the disorders of a democracy; and it was therefore contended that none but freeholders, permanently interested in the Government, ought to have a right of suffrage. The venerable Franklin opposed to this the natural rights of man—their rights to an immediate voice in the General Assembly of the whole Nation, or to a right of suffrage and representation."

Franklin was not the only one who spoke thus. No man in that convention believed that in writing article I, section 2, they were simply leaving it to the discretion of the States whether few or many citizens should be allowed to vote.

Oliver Ellsworth, of Connecticut, advocating the adoption of this provision, said: "The people will not readily subscribe to the National Constitution if it should subject them to be disfranchised."

George Mason, of Virginia, advocating its adoption, said: "Eight or nine States have extended the right of suffrage beyond the freeholders. What will the people there say, if they should be disfranchised?"

Pierce Butler, of South Carolina, advocating its adoption, said: "There is no right of which the people are more jealous than that of suffrage. Abridgments of it tend [as in Holland] to * * * a rank aristocracy."

Even the opponents of section 2 had the same opinion of its effect. Gouverneur Morris, of Pennsylvania, opposing this provision, said: "Give the votes to people who have no property, and they will sell them to the rich who will be able to buy them." John Dickinson, of Delaware, opposing the provision, warned against "the dangerous influence of those multitudes without property and without principle with which our country, like all others, will in time abound."

Because of differing State laws and differing opinions, it was easier to provide for uniformity between State and Federal qualifications than for Federal uniformity among the 13 States, but both in the phraseology employed and in the choice of alternatives the purpose of section 2 was revealed, and the purpose was to establish a broadly democratic base for Federal elections. Madison described the result to the people of America in No. 57 of the Federalist:

"Who are to be the electors of the Federal representatives? Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscurity and unpropitious fortune. The electors are to be the great body of the people of the United States."

The record shows conclusively that article I, section 2 was adopted, not in recognition of any State right to define Federal electors, not to disclaim Federal responsibility, not to open the way to the disfranchisement of American citizens, but as a convenient means of assuring the right of suffrage to the great body of the people without overriding existing State laws which, on the whole, conformed to the standards of that day. Whenever Congress, by virtue of its power to make

necessary and proper laws, elects to enforce article I, section 2 by ending an arbitrary and unnatural disqualification of voters, it will but carry out the declared purpose of the framers of the Constitution to base congressional elections upon the great body of the people, rich and poor alike.

The fathers of our country could not visualize the coming of a time when the people would be corruptly deprived of their rights in State elections, and thereby cause Federal rights to be lost. Put they did look ahead to a time when the conduct of State governments might cause Federal suffrage rights to be lost, and they provided against it in article I, section 4. This section gives Congress power, by law, to regulate the time, places, and manner of electing Members of Congress, and to alter State laws on the subject. The debates in the Constitutional Convention show that the principal purpose of this clause was to make Federal authority paramount in Federal elections and to guard them against corruption. Rufus King, of Massachusetts, said that failure to give Congress this power would be "fatal to the Federal establishment." The words, "time, places, and manner," were not used narrowly. Madison said: "These were words of great latitude." It was impossible, he said, to foresee all the abuses that might arise from an uncontrolled discretion in the States. Whenever the State legislatures had a favorite measure to carry, he said, "they would take care so to mold their regulations as to favor the candidates they wished to succeed."

Under section 4, Congress has acted from time to time to prevent corruption in Federal elections. The poll tax is an agency of wholesale corruption, employed by political machines to debauch and control both Federal and State elections. The Virginia poll-tax requirement of the 1870's was described in the debate on its repeal as having "opened the floodgates of corruption." Poll-tax corruption was a prime factor in the repeal of the requirement in Massachusetts and Pennsylvania.

The poll tax corrupts elections in two ways, by a conditional disfranchisement of the voter, and by what amounts to an absolute disqualification.

The corrupting influence of the conditional disfranchisement is due to the fact that the disqualification can more easily be removed by an agent of political corruption than by the victim of the disfranchisement. Either in accordance with State law or in violation of State law, corrupt political machines buy up poll-tax receipts for those whose votes can be controlled. Citizens who cannot be controlled may be disfranchised by leaving their names off the assessors' books. If the law requires poll-tax payment several months before election, postdated receipts are given to the henchmen of the corrupt machine.

Relatively complete disfranchisement results from various forms of trickery in the writing of the law. In some States the tax is made cumulative, so that, although the yearly rate is small, the total is an impassable bar to voting. In some States it is unlawful to make any effort to collect the tax, which emphasizes the fact that it is not a revenue measure nor even a financial test, but a planned system of disfranchisement. The effect is to corrupt the election by the very development Madison said section 4 was to guard against, a slanting of it by State legislatures "to favor the candidates they wished to succeed." The corruption is the deeper and more pernicious because it aims, by legal trickery, to favor a particular class of candidates in successive elections.

Against the power of Congress to prevent corruption by forbidding poll-tax restrictions it has been argued that this method is unconstitutional because other and lesser measures might be employed to the same end. Those who argue thus would overturn the definition of the "necessary" and "proper" clause given by Chief Justice Marshall in *McCulloch* v. *Maryland* and followed by the Supreme Court without deviation for a century and a quarter.

Observe what happens when you place sections 2 and 4 together, and consider them in relation to each other. Treated as broad and positive powers, they fit snugly together and complement each other. If Congress abolishes the poll-tax requirement under section 4, to prevent corruption, it thereby restores the breadth of suffrage contemplated by the framers of the Constitution when they drafted section 2. If you act under section 2 to defend the rights of citizens, you thereby put an end to the corruption which section 4 guards against. But if you hold that either of these sections takes away the power of Congress to act under the other section, you nullify the purpose of both.

One need not, I believe, go beyond these clauses of the Constitution to find ample power in Congress to put an end to the misuse of the poll tax in Federal elections. Yet this is a narrow approach. When the Constitution is treated as an organic whole, the constitutionality of S. 1280 ceases to turn upon the sections dealing with electoral processes and becomes a matter of the fundamental rights of American citizenship and the fundamental nature of American Government. The basic question is whether the millions of voters disfranchised by poll taxes are deprived of one of the privileges or immunities of citizens of the United States guaranteed to them by the Constitution. Still more basic, but unnecessary to prove because it includes the last, is the question whether this denial of the rights of citizens goes so far as to subvert the republican form of State government made obligatory by the Constitution. For purposes of discussion, these two matters are interrelated. Anything that subverts republican government takes away the privileges and immunities of citizens. Anything that denies the constitutional rights of citizens in matters of government has a tendency to subvert the republican form of government founded upon those rights. Qualifications of electors laid down by State legislatures must harmonize with the constitutional rights of citizens.

Is the right to vote a privilege inherent in American citizenship? Franklin must have thought so when he made it still more basic, declaring that the right to vote is one of the natural rights of man. Jefferson must have thought so in 1824 when he said of his own State of Virginia: "The exclusion of a majority of our freemen from the right of representation is merely arbitrary, and a usurpation of the minority over the majority."

We are likely to be misled on this subject by the fact that property and taxpaying qualifications for voting were once universal in America, and were but slowly eradicated. Of this it may be said, first, that there is no basic resemblance—rather, indeed, a contrast—between the modern poll tax, used as a method of disfranchisement, and the early poll tax which was a true revenue measure and had the effect of extending the right of suffrage. In the second place, the failure to recognize a right at any given time does not prove its nonexistence; and, third, the absence of a right at one time does not prove its nonexistence later.

The rights of American citizens are not static. They are alive and growing, and the more slowly they grow the more surely they are established. Slow growth means a testing of principles in the face of opposition. The privileges and immunities protected by the Constitution are not merely those which were universally acknowledged in 1787 and 1868. They are the accumulated rights and privileges of the whole period in which they were developed, from the days of Protagoras down to the present moment. The poll tax as a weapon against the right to vote is not a recurrence to the property qualifications of 1787. It is a return to the principles of the Greek slave state of the time of Aristotle, who said, as paraphrased by Montesquieu: "It was only by the corruption of some democracies that artisans became freemen * * * a well-regulated republic will never give them the right and freedom of the city." Poll-tax disfranchisement is based on the argument against a broad suffrage set forth by Gouverneur Morris in the Constitutional Convention and denounced and rejected by that body. Said Morris: "The time is not distant when this country will abound with mechanics and manufacturers [by which he meant factory workers]. * * * Will such men be the secure and faithful guardians of liberty?" The founders of our country rejected that doctrine. The Constitution rejects it. But the poll tax accepts it. The poll tax is a device for turning mechanics, factory workers, sharecroppers, tenant farmers, poor landowners, and day laborers back to the condition of servitude which Aristotle and Gouverneur Morris and the Bourbon kings of France thought them fitted for.

I wish now to call attention to the contrast between the modern poll tax and the early American property qualifications for voting. The American colonies were settled in protest against feudal land monopoly. Early land ownership in America was the badge not only of good citizenship, but of democratic equality. It was associated with the doctrine of Montesquieu that in a well-regulated republic, wealth should be divided as evenly as practicable and land holdings should be small and equal. It was associated also with the feeling of those who lived upon the land that it was the source of all things good.

When the colonists first adopted the laws limiting the suffrage to landed freeholders, it produced a near approach to universal suffrage for free adult males, because practically all freemen were freeholders. As land rose in value and men turned to industrial pursuits, disfranchisement resulted. The right to vote was therefore broadened by admitting freemen who paid taxes. The levying of any new tax increased the number of electors. The New Hampshire poll tax of 1784, and other later poll taxes, were laid for the specific purpose of increasing the number of voters. The franchise was broadened further by extending it to citizens who worked upon the public roads or served in the militia. The fundamental test was not wealth, but evidence of devotion to the state, and when the turbulent frontier pushed westward, that evidence was finally found in the simple fact of residence and citizenship. All of this was part of the American march toward universal free manhood suffrage, which has been a part of the original constitution of every State admitted to the Union since 1819, and, until reversed by the modern poll tax, had been accepted by every other State of the Union except Georgia.

This whole evolutionary process toward universal suffrage was a mere writing into American history of the doctrine laid down by Franklin in 1787 that the right to vote is among the natural rights of men. The modern poll tax is an attempt to reverse the processes of political evolution.

Even more directly, the modern poll tax violates the principle of majority government upon which our Constitution is founded. Here there is no evolutionary process, no gradual recognition of public rights under changing conditions. Majority rule has always been the basic principle of American Government. Madison put the matter clearly in 1821 when he declared himself against any property qualification for voting, saying: "It violates the vital principle of free government that those who are to be bound by laws ought to have a voice in making them, and the violation would be

more strikingly unjust as the lawmakers became the minority."

Madison was protesting against the Virginia law limiting the franchise to landowners. But that law, when first adopted, extended the franchise to more than nine-tenths of the adult free males of the colony. It was only when the States lagged in changing their laws to meet changing conditions that they came into conflict with the vital principle of republican rule. These early practices and trends are diametrically opposed to the principle of the modern poll tax, which not only runs counter to the evolutionary development of the rights of American citizens, but also nullifies the fundamental principle of republican government—the rule of the majority.

Madison warned in No. 39 of the Federalist against the easy habit of calling everything a republic that was not a monarchy or a pure democracy. It is impossible, he wrote, to find the distinctive characteristics of the republican form except by recurring to principles. By that test, he wrote:

"We may define a republic to be, or at least may bestow that name on, a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or during good behavior. It is essential to such a government that it be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it."

Under that definition by Madison, the republican form of government does not exist today in eight States of the American Union. The government of those eight States, therefore, cannot be in accord with the privileges and immunities of citizens of the United States.

Here we have something more than a denial of the individual right of the individual citizen to a share in his own Government. It is a denial also of the general public right to majority government in the several States, and to a national government based upon the great body of the people. The poll tax takes away from the individual his constitutional right to help write the laws by which he is governed. It takes away the right of the individual to share in the formation of a collective majority. It takes away the constitutional right of the entire society to enjoy the privilege of majority government.

The fourteenth amendment forbids the States to abridge these privileges, and Congress, under that same amendment, is empowered and enjoined to protect them. The Federal Government is required by the Constitution to maintain the republican form of government in the States. Government by a minority is not the republican form of government which our forefathers created, the only republican government known to our Constitution. It is no answer to say that citizens can obtain the right to vote by paying up their poll taxes. In the State of Alabama, a farmer who has spent his cash income raising a family, buying clothing and shoes for his children, paying for a small farm and keeping up his property taxes, may by default of poll taxes during this period find himself in a position where he must pay $72 cash to regain the franchise for himself and his wife. That is a lifetime disfranchisement, which bears no relationship to his qualifications as a citizen. The fourteenth amendment has little meaning if it does not extend to the cure of such a denial of American rights and perversion of republican government.

The question has been asked why, if the fourteenth amendment covers the voting rights of citizens, it was necessary to adopt the nineteenth amendment in order to extend the right of suffrage to women. That is an excellent negative illustration of the principle of evolutionary growth in the privileges of citizenship. The nineteenth amendment was necessary because the organic growth of the right of suffrage had been confined to men. Similarly, the fifteenth amendment was needed to enfranchise Negroes because the organic growth of the right of suffrage had been confined to white men. Let us suppose that men and women had enjoyed equality at the ballot box from the beginning of American history, that in the colonial period they had been disfranchised to an equal extent by property qualifications, and that each broadening of the right of suffrage had applied equally to men and women. We should then have attained, by 1868, not universal manhood suffrage, but universal suffrage regardless of sex. Then, we'll say, about the year 1919 some State passes a law forbidding women to vote, disfranchising at one stroke half of the entire electorate, taking away a right which they had enjoyed from the foundation of our country. Do you think it would take a nineteenth amendment to wipe out that denial of the privileges and immunities of citizens?

Thus you have four separate provisions of the Constitution, all harmonious, all supplementing each other, under any or all of which Congress has power to abolish the poll-tax restriction upon the right to vote in Federal elections. It has not only the power but the duty. I can hardly do better in closing than to quote the concurring opinion of Mr. Justice Jackson in the unanimous decision by which the Court denied the right of California to exclude a citizen from its territory because of his indigence. He said: "We should say now, in no uncertain terms, that a man's mere property status, without more, cannot be used by a State to test, qualify, or limit his rights as a citizen of the United States." There you have in one sentence the judicial and moral verdict upon the poll tax.

STATEMENT OF JAMES T. MORRISON

I. THE FOUNDING FATHERS CONTEMPLATED AND AUTHORIZED CONGRESS TO LEGISLATE ON THE QUALIFICATION OF ELECTORS

In order to determine the intention of the founding fathers in drafting section 2 of article I of the Constitution, it is necessary to turn for a moment to the proceedings of the Constitutional Convention. The archetype of this section appears in the plan for a constitution submitted to the Convention by Mr. Pinckney. In the Pinckney plan, the provision appears as follows:

"ART. 3. The members of the House of Delegates shall be chosen every — year by the people of the several States; and the qualification of the electors shall be the same as those of the electors in the several States for their legislature." (5 Elliot's Debate, p. 129.)

This provision first came up for consideration in the Convention on Thursday, May 31, 1787, when it was proposed "that the members of the first branch of the legislature ought to be selected by the people of the several States." This resolution was opposed by Messrs. Sherman and Gerry, who favored election by the legislatures. Messrs. Mason, Wilson, and Madison, however, argued for the resolution, and it was carried by a vote of 6 to 2.

The question was again adverted to in Committee of the Whole on June 6, when Mr. C. C. Pinckney moved "that the first branch * * * be elected by the State legislatures, and not by the people." This time Mr. Rutledge joined Messrs. Gerry and Sherman in arguing for election by the State legislatures and Colonel Mason and Messrs. Dickinson, Read, and Pierce joined Wilson and Madison in arguing for election by the people. The Committee of the Whole defeated the proposed change by a vote of 8 to 3.

Again, on Thursday, June 21, the proposition was brought up and, according to Mr. Madison, "General Pinckney moved 'that the first branch, instead of being elected by the people, should be elected in such manner as the legislature of each State should direct.'" After considerable discussion, this proposal was finally rejected by a vote of 4 to 6. * * *

Finally, on Tuesday, August 7, the question of the qualification of electors was again taken up in a consideration of the report of the committee of detail. The committee had proposed the following as the constitutional provision:

"The qualification of the electors shall be the same, from time to time, as those of the electors, in the several States, of the most numerous branch of their own legislatures."

Mr. Madison reports that "Mr. Gouverneur Morris moved to strike out the last members of the section, beginning with the words 'qualification of electors,' in order that some other provision might be submitted which would restrain the right of suffrage to freeholders." This motion provoked considerable debate in the Convention. Mr. Wilson argued that this clause was carefully considered "and he did not think it could be changed for the better. It was difficult to form any uniform rule of qualification for all the States. Unnecessary innovations, he thought, too, should be avoided. It would be very hard and disagreeable for the same person at the same time, to vote for representatives in the State legislature, and to be excluded from a vote for those in the National Legislature."

* * * * *

Finally, and conclusively, the Convention, on June 21, 1787, flatly rejected a proposition that would have placed the qualifications of voters exclusively within the discretion of the State legislatures on grounds incompatible with a surrender of the power to prescribe qualifications by the National Government. On that date, pursuant to prior notice, C. C. Pinckney moved "that the first branch, instead of being elected by the people, should be elected in such manner as the legislature of each State should direct."

This resolution was vigorously attacked:

"Hamilton considered the motion as intended manifestly to transfer the election from the people to the State legislatures, which would essentially vitiate the plan. It would increase the State influence which could not be too watchfully guarded against.

"Wilson considered the election of the first branch by the people, not only as the corner-stone, but as the foundation of the fabric. The difference was particularly worthy of notice in this respect, that the legislatures are actuated not merely by the sentiment of the people, but have an official sentiment opposed to that of the general government, and perhaps to that of the people themselves.

"King enlarged on the same distinction. He supposed the legislatures would constantly choose men subservient to their own views, as contrasted to the general interest, and that they might even devise modes of election that would be subversive of the end in view. He remarked several instances in which the views of a State might be at variance with those of the general government * * *."

Mr. Pinckney's motion was defeated by a vote of 6 to 4. (Prescott—Drafting the Federal Constitution, pp. 208 ff.)

Here, then, is a perfectly clear expression by the Convention that the State legislatures should not be permitted to exercise an exclusive discretion as to the qualifications of electors of national officers because "they may even devise modes of election that would be subversive of the end in view," which certainly the language of article I, section 4, of the Constitution does not override.

While the Constitution as finally submitted did not "restrain the right of suffrage to freeholders" as Gouverneur Morris proposed, it

did omit the significant phrase that the qualifications of electors "shall be the same, from time to time," as those of the electors in the several States, leaving the provision merely to read:

"Electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures."

This highly significant omission can be explained only on the basis of the objection urged by Gouverneur Morris in convention on August 7, "that it makes the qualifications of the National Legislature depend on the will of the State, which he thought not proper."

The significance of the omission of the requirement that the qualifications of electors "shall be the same, from time to time" as those of the electors in the several States, and of the refusal of the Convention to grant the State legislatures exclusive discretion with regard to national elections, because the State legislatures "might even devise modes of elections that would be subversive of the end in view," is made even more apparent by the inclusion of clause 1 in article I, section 4, providing:

"The time, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the place of choosing Senators."

These two clauses read together, particularly in light of Mr. Madison's notes on the discussion in the Convention, and the fears of the fathers that the State legislatures "might even devise modes of elections that would be subversive of the end in view," show clearly an attempt to synchronize the view of Mr. Wilson that "it was difficult to form any uniform rule of qualifications for all the States. Unnecessary innovations * * * should be avoided." With Gouverneur Morris' objection "* * * it makes the qualifications of the National Legislature depend on the will of the State, which he thought not proper." The Constitution as finally worked out provides no uniform rule of qualification, makes no innovations and gives to the State, in the first instance, regulatory powers with regard even to national elections; but it heeds Gouverneur Morris' objections by retaining in Congress the power "to make or alter such regulations, except as to the places of choosing Senators."

Finally, if there was any question but that the founding fathers did not intend to surrender completely to the States the fundamental democratic power of determining the qualifications of voters, it is erased by the plain language of article I, section 8, subsection 18:

"The Congress shall have power * * * to make all laws which shall be necessary and proper for carrying into execution * * * all * * * powers vested by this Constitution in the Government of the United States."

Not only is the regulation of the "time, place, and manner of holding elections" a power specifically and expressly vested in the Congress by article I, section 4, but the determination of the qualifications of voters is a power unquestionably exercised by the Government of the United States in article I, section 2 of the Constitution itself. The very exercise of the power by the Constitution proves conclusively that it is one "vested by this Constitution in the Government of the United States," from which it inevitably follows that Congress has the power to make all laws which shall be necessary and proper for carrying (it) into execution."

It has been urged that article I, section 4, clause 1 should be restricted to the mechanics of election and that it does not apply to the substance thereof or to the qualifications of electors. But this view is totally inacceptable in light of the history of article I, section 2, as set out above. It would, indeed, be strange if the founding fathers, whose wisdom and political sagacity in creating a document of enduring strength, permitted in this single instance an aberration which reserved to the National Government the right only to tinker with the mechanics of election while leaving entirely within the discretion, one might almost say, within the caprice, of the States complete power over the substance thereof. But there is nothing in the Constitution to indicate that the founding fathers were so shortsighted. They must have known, for instance, that Massachusetts from 1631 to 1664 had a law declaring that "for time to come noe man shall be admitted to the freedom of this body polliticke, but such as are members of some of the churches within the lymitts of the same," and that in the colonial period from which the country was then but just emerging "Baptists, Quakers, Roman Catholics, and Jews frequently found themselves excluded from political rights."

Certainly it cannot be suggested that the founding fathers meant to perpetuate such a theocratic system, or to make it possible for it to gain a foothold or to endure as a result of individual State action. Indeed, the Convention was already split on the question of property qualifications by pressure from the rising mechanics and merchant class, who were opposed to the property qualification. The record of the Convention makes it clear that it was in order not to disturb the delicate balance achieved in the several States between the proprietary and mechanics classes that the compromise incorporated in article I, section 2 was hit upon and adopted. It represents an acceptance for the time being only, of the status quo; it does not even suggest that the adjustment made shall be permanent; indeed, it was purposely designed to permit of change; and certainly it does not even imply that only the individual States can change it. To the contrary, words which did imply exclusive power in the States to alter the qualification of voters were significantly omitted after Gouverneur Morris' objection "that it made the qualifications of the National Legislature depend on the will of the States, which he thought not proper." To turn this clause, then, into a surrender of power by the National Government to the States is to miss the point always insisted upon by the fathers, that the National Government must prescribe the qualifications of its voters, and to defeat the whole purpose of its inclusion in the Constitution, for it is obvious that if the purpose of the clause were to surrender the power to the States, it need never have been included in the Constitution at all, or would have been phrased in unambiguous language such as was used in giving the State legislatures exclusive jurisdiction, with certain exceptions, over the qualifications of Presidential electors.

That article I, section 4, clause 1, was neither intended nor understood to be the innocuous procedural regulations of election machinery ascribed to it by later writers, appears clearly from the storm of controversy which arose over its inclusion in the Constitution. This controversy was so heated that Hamilton felt constrained to devote two numbers of the Federalist to this clause of the Constitution (Federalist, Nos. 59 and 60). In this connection, he said:

"This provision has not only been declaimed against by those who condemned the Constitution in the gross, but it has been censured by those who have objected with less latitude, and greater moderation; and, in one instance it has been thought exceptionable by a gentleman who has declared himself the advocate of every other part of the system."

Certainly such a hue and cry was not raised over whether the Federal Government had the power to open the polls at 7 in the morning rather than at 8, or the power to declare that elections should be held on the first Tuesday after the second Monday of November, or the 31st of May, or even whether the election should be held in the precincts, counties, or special districts, or where not; and certainly Hamilton himself was not thinking purely in the terms of such mechanical devices when he declared the importance of the provisions to be as follows:

"I am greatly mistaken, notwithstanding, if there be any article in the whole plan more completely defensible than this. Its propriety rests upon the evidence of this plain proposition * * * every government ought to contain in itself the means of its own preservation. Every just reason will, at first sight, approve an adherence to this rule, in the work of the convention; and will disapprove every deviation from it which may not appear to have been dictated by the necessity of incorporating into the work some particular ingredient, with which a rigid conformity to the rule was incompatible. Even in this case, though he may acquiesce in the necessity, yet he will not cease to regard and to regret a departure from so fundamental a principle, as a portion of imperfection in the system which may prove the seeds of future weakness and perhaps anarchy.

"It will not be alleged, that an election law could have have been framed and inserted in the Constitution, which would have been always applicable to every probable change in the situation of the country; and it will, therefore, not be denied, that a discretionary power over election ought to exist somewhere. It will, I presume, be as readily conceded, that there are only three ways in which this power could have been reasonably modified and disposed: That it must either have been lodged wholly in the national legislature, or wholly in the State legislatures, or primarily in the latter and ultimately in the former. The last mode has, with reason, been preferred by the Convention. They have permitted the regulation of elections for the Federal Government, in the first instance, to the local administration; which, in ordinary cases, and when no improper views prevail may be both more convenient and more satisfactory; that they have reserved to the national authority a right to interpose, whenever extraordinary circumstances might render that interposition necessary to its safety.

"Nothing can be more evident, than exclusive power of regulating election for the National Government, in the hands of the State legislatures, would leave the existence to the Union entirely at their mercy. They could at any moment annihilate it, by neglecting to provide for the choice of persons to administer its affairs. It is to little purpose to say, that a neglect or omission of its kind would not be likely to take place. The constitutional possibility of the thing without an equivalent for the risk, is an answerable objection. Nor has any satisfactory reason been yet assigned for incurring that risk."

II. S. 1280 IS CONSTITUTIONAL AS WITHIN THE UNDISPUTED POWER OF CONGRESS TO PROTECT THE PURITY OF THE BALLOT

S. 1280 expressly provides that—

"The requirements * * * that a poll tax be paid as a prerequisite for voting or registering to vote * * * have been detrimental to the integrity of the ballot in that frequently such taxes have been paid for the voters by other persons as an inducement for voting for certain candidates; and * * *

"Whereas such requirements * * * cause, induce, and abet practices and methods in respect to the holding of primaries and elections detrimental to the proper selection of persons for national offices * * *."

This amounts to a direct finding by the Congress that abolition of the poll tax is essential to the protection of the purity of the ballot in Federal elections. Such a legisla-

tive finding is not subject to impeachment by the courts, certainly not where supported by evidence, and the peculiar susceptibility of the poll tax to corrupt practices in elections is a matter of common knowledge, too well known to require extended discussion.

Nothing can be clearer than that Congress possesses the power to legislate to protect the purity of the ballot in elections for national officers. The principle was completely settled and has never been deviated from since the first case to come before the Supreme Court raising the question (*Ex parte Yarbrough* (110 U. S. 651)).

* * * * *

It will be argued that the poll tax, be it a device for ever so much corruption, is immune from congressional interference, because, as a "Qualification requisite for elections of the most numerous branch of the State legislature," the power is expressly granted to the States by article I, section 2, of the Constitution to impose it as a qualification for the electors of national officers. But this is a fallacy to which at least three answers may be given:

1. Any such argument must assume that article I, section 2, grants to the States an exclusive power over the qualifications of voters for national officers, an assumption which the first part of this memorandum has demonstrated to be fallacious.

2. The Constitution expressly grants Congress plenary authority to regulate the "manner of holding elections." As said by the circuit court in *United States* v. *Munford* (16 Fed. 223):

"If Congress can provide for the manner of elections, it can certainly provide that it shall be an honest manner; that there shall be no repression of voters and an honest count of the ballot."

It should be clear, then, without going further, that the plenary authority with regard to the manner of conducting elections exercised by Congress under article I, section 4, supersedes even an exclusive State authority (if such it is) to prescribe qualifications.

3. Since the Classic case there is no longer any doubt but that the right to vote in national elections is one dependent on and secured by the Constitution—specifically by article I, section 2 thereof. This being so, it inevitably follows that Congress, under article I, section 8, clause 18, as well as under article I, section 4, is empowered to protect the exercise of such right against fraud, coercion, violence, or corruption. * * *

Again, the power of Congress to legislate upon matters within the scope of its authority is plenary under the very terms of the Constitution itself, which provides that:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof * * * shall be the supreme law of the land; and the judges in every State shall be bound thereby; any thing in the constitution or laws of any State to the contrary notwithstanding."

Hence, it is clear that an act of Congress passed pursuant to the Constitution is "the supreme law of the land," superior to its obligation to a State law or constitution, even although it, too, is passed pursuant to the Constitution of the United States. This has been decided in innumerable cases by the Supreme Court. * * *

And so here, too, with respect to S. 1280, even granting that the Constitution in article I, section 2, places the determination of the qualifications for voters in national elections exclusively in the States—yet when Congress exercises its undoubted power to protect the purity of the national ballot under article I, section 4, and under article I, section 8, clause 18, the exercise of which conflicts with a state power, the latter must, under our constitutional system, yield to the paramount power of Congress.

III. S. 1280 IS AUTHORIZED BY THE FIFTH SECTION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

Perhaps no power of Congress has been so little understood and so little exercised as that conferred upon the Congress by the fifth section of the fourteenth amendment. Like the spending power recently rediscovered in connection with the social security and agricultural adjustment programs, and the war power resurrected only in periods of national emergency, the enforcement power, as it may be called, of the fourteenth amendment has lain dormant since its first flurry of activity during the reconstruction period. But the failure of Congress to exercise this power must not be permitted to mislead, either as to its scope, or its importance; for the provision is pregnant with possibilities. This section merely provides that—

"The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

On its face, this provision is innocuous enough. But when it is considered that these words relate back to, and grant Congress the power to enforce, as against abridgments by States, such broad and comprehensive concepts as "Privileges and immunities of citizens of the United States"—deprivations of "life, liberty, and property without due process of law"—and denials of "the equal protection of the law"—then the tremendous scope of the latent congressional authority can be appreciated.

The significance of the tremendous scope of authority proposed to be conferred upon the Congress by this fifth section of the fourteenth amendment did not escape the Congress which proposed the amendment. It was consciously intended to confer broad and new powers, not theretofore possessed under the Constitution, on the Congress. Senator Howard, in introducing the resolution proposing the fourteenth amendment in the Senate, speaking for the joint Committee of Fifteen who drafted the proposal, said, in speaking of the fifth section:

"Here is a direct affirmative delegation of power to Congress to carry out all the principles of all these guaranties, a power not found in the Constitution" (Congressional Globe, 19th Cong., 1st sess., p. 130).

Its importance was emphasized by the attacks made upon the fifth section in the House. Mr. Hendricks said of it:

"When these words were used in the amendment abolishing slavery, they were thought to be harmless, but during this session there has been claimed for them such force and scope of meaning as that Congress might invade the jurisdiction of the States, rob them of their reserved rights, and crown the Federal Government with absolute despotic power. As construed, this provision is most dangerous."

A student of the period has commented on it as follows:

"These unequivocal statements by the representatives of the two parties leave little room for doubt as to the purpose of the section, or of the power to be conferred on Congress. What the one regarded as essential to the amendment to make it effective, the other regarded as dangerous."

The bearing of this on the constitutionality of S. 1280 is, of course, immediate, direct, and simple. The Classic case has held fully, finally, and decisively that—

"The right of the people to choose (i. e., the elective franchise in national elections) * * * is a right (privilege) established and guaranteed by the Constitution * * *."

This being so, it must inevitably be a "privilege or immunity of citizens of the United States" within the first section of the fourteenth amendment, and as such, under the fifth section thereof: "Congress shall have power to enforce, by appropriate legislation, the provisions of this article," including abridgments of "privileges * * * of citizens of the United States"—i. e., abridgments of the elective franchise in national elections. As said by the Supreme Court of the United States in *Strauder* v. *Virginia:*

"A right or an immunity, whether created by the Constitution or only guaranteed by it, even without any express delegation of power, may be protected by Congress (*Prigg* v. *Com.* (16 Pet. 539)). So in *U. S.* v. *Reese* (92 U. S. 214, 23 L. ed. 563) it was said by the chief justice of this court: 'Rights and immunities created by or dependent upon the Constitution of the United States can be protected by Congress. The form and manner of the protection may be such as Congress in the legitimate exercise of its legislative discretion shall provide. These may be varied to meet the necessities of the particular right to be protected.' But there is express authority to protect the rights and immunities referred to in the fourteenth amendment, and to enforce observance of them by appropriate congressional legislation."

It is the fact of congressional exercise of its power under the fifth section of the fourteenth amendment to prevent abridgments by States of the right or privilege of citizens of the United States to exercise the elective franchise in national elections that distinguishes this situation from those presented in *Breedlove* v. *Suttles* and *Pirtle* v. *Brown*. In each of these cases the Court was asked to strike down the State requirement of payment of poll taxes on their own motion, and without implementation by Congress. This the court quite properly refused to do. As pointed out in the early case of *Ex parte Virginia:*

"All of the amendments derive much of their force from this latter provision. It is not said the judicial power of the General Government shall extend to enforcing the prohibitions and to protecting the rights and immunities guaranteed. It is not said that branch of the Government shall be authorized to declare void any action of a State in violation of the prohibitions. It is the power of Congress which has been enlarged. Congress is authorized to enforce the prohibitions by appropriate legislation. Whatever tends to enforce submission to the prohibitions and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power.

"Nor does it make any difference that such legislation is restrictive of what the State might have done before the constitutional amendment was adopted. The prohibitions of the fourteenth amendment are directed to the States, and they are to a degree restrictions of State power. It is these which Congress is empowered to enforce, and to enforce against State action, however put forth, whether that action be executive, legislative, or judicial. Such enforcement is no invasion of State sovereignty. No law can be, which the people of the States have, by the Constitution of the United States, empowered Congress to enact. This extent of the powers of the General Government is overlooked, when it is said, as it has been in this case, that the act of March 1, 1875, interferes with State rights. It is said the selection of jurors for her courts and the administration of her laws belong to each State; that they are her rights. This is true in general. But in exercising her rights a State cannot disregard the limitations which the Federal Constitution has applied to her power. Her rights do not reach to that extent. Nor can she deny to the General Government the right to exercise all its granted powers, though they may interfere with the full enjoyment of rights she would have if those powers had not been thus granted. Indeed, every addition of power to

the General Government involves a corresponding diminution of the governmental powers of the States. It is carved out of them."

In the present case, therefore, quite a different situation will prevail when the constitutionality of this statute is presented for adjudication. Unlike the situation which prevailed in the Breedlove and the Pirtle cases, Congress will have spoken. It will have declared, in effect, that the requirement in some of the States for the payment of a poll tax as a prerequisite for voting in national elections is an abridgment of a right or privilege of citizens of the United States, established and guaranteed by the Constitution. It will have prohibited the States from imposing through its legislatures and enforcing through its administrative and executive officers the abridgment found to exist. In so acting, Congress will have complied to the letter with the provisions of the fifth section of the fourteenth amendment in enforcing the privileges and immunities of citizens of the United States as defined in *United States* v. *Classic*, in *Ex parte Yarbrough* and by Mr. Justice Bushrod Washington in *Corfield* v. *Coryell*. Under such circumstances no court will declare the act of Congress unconstitutional.

IV. CONCLUSION

The attention of the committee has so far been directed exclusively to justifying the power of Congress to prescribe the qualifications of voters in national elections. I should like, for just a moment, to direct the attention of the committee to the implications of the converse of that proposition—that the authority to prescribe the prerequisites to voting is a power resting exclusively in the legislature of each State over which the Congress has absolutely no control. These implications are, to say the least, startling, and, I submit, certainly not outside the boundaries of possibility, and even probability.

It must be recalled that the only constitutional restrictions on State abridgments of the elective franchise are contained in the XV and XIX amendments prohibiting the denial of the right to vote because of:

1. Race,
2. Color,
3. Previous condition of servitude, or
4. Sex.

It must be assumed, if the converse of the proposition here supported is true, that the individual States can impose any qualification on voting except such as violate the above prohibitions. Hence, Massachusetts could well reenact its statute of 1631, that "for time to come noe person shall be admitted to the freedom of this body politicke, but such as are members of some of the churches within the lymitts of the same."

There is no prohibition against the States establishing religious qualifications for voters. Montana could provide that only Catholics could vote; Nebraska that only Spiritualists; South Carolina only Lutherans, and Congress would be powerless to interfere. Moreover, Kansas could provide that only those who subscribed to the principles of the Communist philosophy possessed the qualifications requisite for voting; Idaho that only Fabian Socialists could vote; Indiana that only those who accept the principles of the corporative state; and Louisiana only members in good standing of the share-the-wealth clubs, who accepted the principles of every man a king, possessed qualifications entitling them to vote for Members of Congress. There is no constitutional prohibition against the imposition of any of the above qualifications—yet does any person seriously believe that the National Government would for a moment countenance such qualifications? And let no one say "It can't happen here"—it is now happening and has happened in too many parts of the democratic world.

Again, a number of States already disqualify from voting inmates of State-maintained charitable and eleemosynary institutions. It is but a step from this for States so inclined to disqualify recipients of WPA and social-security benefits. Already the cry is being raised in many sections of the country that such beneficiaries should be disqualified from voting. If Congress cannot outlaw the poll tax neither can it outlaw a disqualification based on receipt of benefits.

Thus the argument that Congress cannot constitutionally interfere with qualifications for voters in national elections established by the State legislatures reduces itself to an absurdity, and lays the foundation for a dissolution of the Union, for, obviously, it is impossible to adopt a separate constitutional amendment (such as the XV and XIX) to prohibit every deleterious qualification of voters that the ingenuity of the States can devise that would, as Mr. King pointed out on June 21, 1787, "be subversive of the end in view" in the establishment of the National Government.

Thus it appears that S. 1280 is constitutional from every point of view, and, indeed, that the position that Congress has no authority to prescribe the qualifications of voters in national elections leads to absurd and totally inacceptable conclusions. Perhaps this memorandum can but be concluded in the words of the venerable Benjamin Franklin, whose views on the qualifications of voters are particularly appropriate in view of the horrible and desperate war we are now waging. "It is of great consequence that we should not depress the virtue and public spirit of our common people; of which they displayed a great zeal during the war, and which contributed principally to the favorable issue of it. He related the honorable refusal of the American seamen, who were carried in great numbers into the British prisons during the war to redeem themselves from misery or to seek their fortunes, by entering on board the ships of the enemies to their country; contrasting their patriotism with a contemporary instance, in which the British seamen made prisoners by the Americans readily entered on the ships of the latter on being promised a share of the prizes that might be made out of their own country. This proceeded, he said, from the different manner in which the common people were treated in America and Great Britain. He did not think that the elected had any right, in any case, to narrow the privileges of the electors." (Madison's Notes on the Debates on the Federal Constitution. Debate of August 7).

Mr. MORSE. Mr. President, the question of the constitutionality of an anti-poll-tax bill has been considered by a great many lawyers in the United States, particularly by lawyers who have been representing the various minority groups vitally interested in and conversant with the need for anti-poll-tax legislation. The National Association for the Advancement of Colored People had, as of counsel on the subject, three outstanding colored attorneys, William H. Hastie, Leon A. Ransom, and George W. Crockett, Jr., assisted by Leslie Perry. They prepared what I considered to be an exhaustive and very able and sound brief on the subject of the constitutionality of anti-poll-tax legislation. Section 4 of the brief deals with the subject The Poll-Tax Requirement Is Not a Qualification Within the Meaning of Section 2, Article I, of the Constitution, and section 3 deals with the subject H. R. 7 Is Authorized by the Fifteenth Amendment to the Constitution.

In view of the fact, Mr. President, that I have stressed throughout my argument in support of the constitutionality of the anti-poll-tax bill many of the points raised in this brief, I ask permission to have sections 3 and 4 of the brief printed as part of my remarks, because I agree with the contents of the brief, particularly sections 3 and 4. I repeat that the brief was prepared by counsel for the National Association for the Advancement of Colored People.

There being no objection, the sections 3 and 4 of the brief were ordered to be printed in the RECORD, as follows:

III. H. R. 7 IS AUTHORIZED BY THE FIFTEENTH AMENDMENT TO THE CONSTITUTION

In addition to the constitutional provisions already discussed, it is evident, too, that at least insofar as the Negro citizens of the Nation are involved, the enactment of H. R. 7 is authorized by the fifteenth amendment to the Constitution. This amendment provides that:

Section 1: The right of citizens of the United States to vote shall not be denied or abridged by any State on account of race, color, or previous condition of servitude.

Section 2: The Congress shall have power to enforce this article by appropriate legislation.

Ratification of this amendment was completed in 1870, and it is no mere coincidence that shortly after this date the poll-tax-payment requirement as a qualification for voting mushroomed into prominence and became indigenous to those States having the bulk of the country's Negro population.[1] The requirement was first adopted in Tennessee in 1870; then Virginia followed in 1875; Florida, 1885; Mississippi, 1890; Arkansas, 1892; South Carolina, 1895; Louisiana, 1898; North Carolina, 1900; Alabama, 1901; and Texas, 1903. (See the statement of Henry H. Collins, "The poll tax in the South after 1865," subcommittee's hearings on S. 1280, at p. 253.) Only 7 of the 11 original poll-tax States now have a poll-tax requirement; North Carolina, Florida, Georgia, and Louisiana have abolished their requirement. But these 7 remaining poll-tax States not only have substantial Negro populations,[2] but their combined Negro population totals 6,534,113, or more than half of the Nation's Negro citizens.[3]

We are not, however, relegated to the use of statistics to demonstrate that the primary purpose of the poll-tax requirement in these States was, and is, the disfranchisement of

[1] The Georgia constitutions of 1865 and 1877 made the payment of all taxes a prerequisite to voting in general elections; but in 1908 the constitution was amended so as to make payment of the poll tax a requirement for voting in the primary election also.

[2] Alabama's total population is 2,832,961 of which 983,290 are Negroes; Arkansas' total is 1,949,384 of which 482,578 are Negroes; Mississippi's population totals 2,183,796 which includes 1,074,578 Negroes; South Carolina's population of 1,899,804 includes 814,664 Negroes; while Tennessee's 2,915,841 includes 508,736 Negroes; 924,391 Negroes are included in Texas' population of 6,414,824; while Virginia's total of 2,677,773 includes 661,449 Negroes. (All figures taken from the United States Census, 1940.)

[3] The term "potential voters" might well be used instead of citizens since, according to the 1940 census, "The highest proportion [of native born persons above 21 years], 99.8, was found in four Southern States—North Carolina, South Carolina, Georgia, and Mississippi." In Alabama and Tennessee, 99.7 percent of the population, 21 years and over, was native born; Virginia, 99.5; and Texas, 96.1 (Series P–10. No. 5, Sixteenth Census of the United States, 1940.)

the Negro population. The great mass of testimony presented at the subcommittee's hearings on S. 1280 verifies this conclusion. Indeed, the Judiciary Committee's report to the Senate, recommending the passage of that bill, expressly so found. Its findings on this point are so strong and so well stated that extended quotation therefrom seems justified:

"We desire to call attention to the Virginia constitutional convention which submitted an amendment which was afterward adopted to the constitution of Virginia by which it was intended to disfranchise a very large number of Virginia citizens. We think this convention can be regarded as a fair sample of other conventions in other poll-tax States Hon. Carter Glass was a member of that convention. Near the beginning of the convention Senator Glass made a speech in which he outlined in very forceful language what the object was, after all, of the convention. * * * Near the beginning of the convention he made a speech in which he said: 'The chief purpose of this convention is to amend the suffrage clause of the existing constitution. It does not require much prescience to foretell that the alterations which we shall make will not apply to all persons and classes without distinction. We were sent here to make distinctions. We expect to make distinctions. We will make distinctions.'

"Near the conclusion of the convention, Senator Glass delivered another address in which he referred to the work already performed by the convention. He said 'I declared then (referring to the beginning of the convention and the debate on the oath) that no body of Virginia gentlemen could frame a constitution so obnoxious to my sense of right and morality that I would be willing to submit its fate to 146,000 ignorant Negro voters [great applause] whose capacity for self-government we have been challenging for 30 years past.'

"There is no doubt that what Senator Glass stated is the real object the convention had in view. The fact that his remarks were received with great applause indicates that his fellow members of that convention agreed with him and that the real object they had in view, and which they believed they could accomplish, was disfranchising '146,000 ignorant Negro voters.'

* * * * *

"It ought to be borne in mind also that many, if not all, of these constitutional amendments in the poll-tax States are in direct conflict with the statutes under which these States were readmitted to the Union under the act of Congress of June 26, 1870 (16 Stat., p. 62). The provision which refers to Virginia reads as follows: 'The constitution of Virginia shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote, who are entitled to vote by the constitution herein recognized, except as punishment for such crimes as are now felonies at common law, whereof they have been duly convicted under laws, equally applicable to al' the inhabitants of said State: *Provided*, That any alteration of said constitution, prospective in its effect may be made in regard to the time and place of residence of voters.'

* * * * *

"It seems perfectly plain that the object of this poll-tax provision in the State constitutions was not to prevent discrimination among the citizens but to definitely provide for a discrimination by which hundreds of thousands of citizens were taxed for the privilege of voting and that, therefore, under section 2 of article I of the Constitution, it seems plain that such a provision in the State constitution, or State law, was simply a subterfuge to accomplish other aims by resorting to the so-called qualification clause in section 2 of article I of the Constitution. It is likewise equally plain that at the end of the War Between the States when these States were readmitted to the Union, they were readmitted under a statute of Congress which provided explicitly that the constitutions of the States 'shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote.'

"It is therefore plain, under all the circumstances, that the so-called poll-tax laws of the State bringing about such a disqualification to its citizens in the exercising of suffrage is in clear violation of the laws of Congress in addition to being a violation of the Constitution of the United States."

If then, the primary purpose of these State poll-tax requirements is, as the committee stated, the disfranchisement of a substantial portion of the Nation's colored population; and since, as the hearings on S. 1280 have indisputably demonstrated, this purpose has been and continues to be effectively achieved; it is readily apparent that these State enactments constitute an intentional denial or abridgment of "the right of [Negro] citizens of the United States to vote * * * on account of race, color, or previous condition of servitude." Hence, they are violative of the express prohibition contained in the fifteenth amendment and the Congress is specifically authorized by section 2 of that amendment to strike down all such State abridgments by the adoption of such corrective and counteracting legislation as H. R. 7. (See *James* v. *Bowman* (190 U. S. 127, 137); *United States* v. *Reese* (92 U. S. 214); and *Guinn* v. *United States* (238 U. S. 347).)

IV. The Poll-Tax Requirement Is Not a Qualification Within the Meaning of Section 2, Article I, of the Constitution

Those who challenge the constitutionality of H. R. 7 rely upon the last clause in section 2 of article I of the Constitution. This section provides:

"The House of Representatives shall be composed of Members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature."[4]

These opponents of the bill contend that the language of the above article confers upon the States the power to determine who shall participate in Federal as well as State elections; that this power is uncontrollable, except as it has been modified by the fourteenth and nineteenth amendments; and that any further encroachment upon this power of the States must be amendments to the Constitution. In support of their position they rely upon the Supreme Court's decision in *Breedlove* v. *Suttle* (302 U. S. 277) and the later refusal by that Court to grant a writ of certiorari to review the decision of the Circuit Court of Appeals for the Sixth Circuit in *Pirtle* v. *Brown* (118 F. (2d) 218). A close examination of these decisions, however, fails to indicate any support for such a broad proposition.

The Breedlove case concerned the validity, under the fourteenth and nineteenth amendments to the Constitution, of the Georgia poll-tax requirement. Petitioner, a white man, applied to the registrar to register "for voting for Federal and State officers at primary and general elections." The statutes of Georgia required that any person proposing to vote, should first subscribe to an oath that he had paid his State's poll tax. Petitioner, who had not paid the tax, demanded that the registrar administer the oath to him and omit all reference to the poll tax. Upon the registrar's refusal, petitioner requested the trial court to issue a writ of mandamus compelling the registrar to comply with his request. The trial court's refusal of the writ was affirmed by the Georgia appellate court and later by the United States Supreme Court.

The rationale of the Supreme Court's decision is, we submit, readily discernible from the above underlined quotation taken from its opinion. The petitioner in challenging the validity of the Georgia poll-tax requirement did so, not as a Federal elector, but as a State and Federal elector; he sought to register for both State and Federal elections. As we have seen (supra), it is not a privilege automatically inhering in United States citizenship that one be allowed to vote in Federal elections; and, certainly, there is no such privilege as to State elections. Also we have seen that nothing in the fourteenth amendment prohibits a State from imposing a poll tax, as a taxing measure, so long as it appears on its face to be a reasonable taxing measure. And there likewise is nothing in either the fourteenth amendment or in the nineteenth amendment that prohibits a State from making the payment of reasonable taxes a prerequisite to registering or voting in a State election. Since then, petitioner, insofar as the State election was concerned, was challenging a State statute of undoubted constitutionality as applied to him, the Supreme Court concluded that his claim should be denied.

The difficulty opponents of H. R. 7 seem unable to overcome in properly interpreting the Breedlove and Pirtle decisions stems from the Supreme Court's failure to restrict its opinion on this point. The particular language in the Breedlove opinion which has occasioned this misconception is the following:

"To make payment of poll taxes a prerequisite of voting is not to deny any privilege or immunity protected by the fourteenth amendment (or the nineteenth amendment). Privilege of voting is not derived from the United States, but is conferred by the State and, save as restrained by the fifteenth and nineteenth amendments and other provisions of the Federal Constitution, the State may condition suffrage as it deems appropriate" (302 U. S. 277, 283).

Those who rely upon this language as supporting power in the States to condition the exercise of the Federal franchise upon the payment of State poll taxes, point out that the Court's opinion does not qualify the word "voting"; it does not say that payment may be made "a prerequisite of voting" in State elections only. And, of course, the Court's subsequent denial of certiorari in the Pirtle case lends color to this interpretation.

But did the Court intend to decide that the fifteenth and nineteenth amendments constituted the only restrictions upon the States' power to set forth the qualifications or the conditions precedent which should determine those privileged to vote in Federal elections? The answer, we submit, must be in the negative; both reason and authority militate against any such holding. Some significance must be attached to the Court's reference in the above quotation to "other provisions of the Federal Constitution." These "other provisions," together with their significance were quite forcefully pointed out by the Court's later opinion and decision in *United States* v. *Classic* (313 U. S. 299), quoted supra, page 9.

[4] A similar provision is found in the seventeenth amendment providing for the popular election of Senators. The evident purpose of thus defining the Federal electorate in the several States in terms of the State electorate in those States was to insure the broadest and most democratic base administratively possible for the election of Federal officers—a policy with which the present State poll-tax requirements is at direct variance. This point is fully developed in the statement of Irving Brant before the Subcommittee on S. 1280 (Hearings, pp. 209–211) and the brief of the National Lawyers' Guild (Hearings 241, 246–247), and will not be enlarged on here.

Admittedly, however, this explanation of the Breedlove decision in terms of its application to State elections only does not reconcile the denial of the certiorari in the Pirtle case, where a Federal election only was involved. Also, it does not take into account the fact that certiorari was denied in the Pirtle case after the decision in the Classic case. All of which, we think, serves to emphasize what we have said before, namely, that the only logical explanation for this seeming conflict in the Supreme Court's actions in these cases is the fact that poll-tax statutes appear on their face to be bona fide tax measures, and the requirement that they be paid as a condition to voting also appears on its face to be a reasonable method of collecting the tax. It is only when the purposes or motives of the States in adopting this means of collection is presented—which were not considered in the Breedlove case—that the viciousness and illegality of the scheme is demonstrated. The Supreme Court, however, seems committed to the view that purposes or motives are "beyond the scope of judicial inquiry (*Magnano Co. v. Hamilton* (292 U. S. 40, 44)); but cf. *Child Labor Tax Case* (259 U. S. 20, 38, cited supra, p. 14)). Any petition seeking to eliminate these requirements as qualifications for Federal electors by showing their true purpose and effect must, therefore, be presented to the Congress as the only branch of the Federal Government capable to consider and deal adequately with the whole issue.

We have stated above that reason supported our conclusion that the power exercised by the States in setting forth the qualifications of electors for the most numerous branch of their legislatures and, by virtue of section 2 of article I of the Constitution, for Members of the Congress also, was limited by other constitutional provisions besides the fifteenth and nineteenth amendments. The reason inheres in the nature of our dual system of government. To hold that the States alone, and subject only to the constitutional mandate that no qualification be based upon sex, color, race, or previous condition of servitude, may determine who shall vote for Federal officers would, when carried to its logical extreme, be tantamount to denying to the National Government the only means by which its continued existence and the orderly conduct of its constitutional functions might be assured. For obviously, if the States alone are to have the final word on who shall be Federal electors, they may, by the imposition of qualifications stringent, unreasonable, and having no relation whatever to one's character or fitness to vote, exclude so many voters that the Federal electorate will be reduced to nil. Indeed, that is precisely the condition the poll-tax qualifications have produced. For example, the State of Rhode Island with 424,876 citizens 21 years of age and over, cast 319,649 votes for Presidential electors, or 75 percent of the potential vote in 1940. While Georgia, on the other hand, with a potential voting population of 1,768,969 citizens 21 years of age and over, only cast 312,539 votes, or 18 percent of its potential vote. (See chart on pp. 289–290 of subcommittee's hearings on S. 1280.) Nor is it any answer to this argument to urge that since the States can reduce the Federal electorate only by reducing the State electorate for the most numerous branch of the State legislature, reduction of the latter to a point where it ceases to be a means of insuring a republican form of government within the State would bring into operation section 4 of article IV of the Constitution, which provides that:

"The United States shall guarantee to every State in this Union a republican form of government."

The short reply to any such contention is that the above comparison between the size of the electorate in a poll-tax and in a non-poll-tax State, being typical, demonstrates conclusively that a republican form of government as contemplated by the Constitution does not now exist in the poll-tax States; and accordingly the Congress, pursuant to the general constitutional mandate to "make all laws which shall be necessary and proper for carrying into execution the * * * powers vested by this Constitution in the Government of the United States," is authorized to restore a republican form of government to the people of these poll-tax States by enacting H. R. 7. For the simple, evident, and indisputable truth is that the poll-tax requirement is not and never was intended by its sponsors to be a qualification or a gage of the citizen's fitness to participate in representative government. Therefore it should be abolished.

CONCLUSION

For the foregoing reasons we urge that this committee recommend to the Senate passage of H. R. 7.

Respectfully submitted.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE.
NEW YORK, N. Y.
Of counsel:
WILLIAM H. HASTIE.
LEON A. RANSOM.
GEORGE W. CROCKETT, Jr.
OCTOBER 1943.

Mr. MORSE. With that, Mr. President, I am about to conclude my remarks on the subject by saying to the gentlemen of the opposition that I consider it has been a great privilege to join issue with them on the subject. I am sure that they will share my opinion that we have fought it out on highly professional grounds, as lawyers should, and, as lawyers, I am sure they also agree with my point of view that in due course of time, if we are allowed to pass an anti-poll-tax bill in the Senate, our argument will be settled once and for all, by that repository of constitutional decisions, the United States Supreme Court.

Mr. President, I close with the prayer and the plea that the Senators on the other side of the aisle, after completing their case on the merits of this issue in accordance with what I think, in the clear contemplation of the people of the country, should be the practice of the United States Senate, will agree to allow a vote to be taken on the bill, so that we may start the issue on its way to final constitutional determination by the men who, under our three-branch check-and-balance system of government, have the solemn obligation of passing finally on constitutional questions.

With that statement, that prayer, and plea, I close my remarks on this subject.

Mr. President, I should like now to say a few words regarding another matter.

The PRESIDING OFFICER. The Senator from Oregon may proceed.

AMENDMENT OF SERVICEMEN'S READJUSTMENT ACT OF 1944

Mr. MORSE. Mr. President, I ask unanimous consent to introduce for appropriate reference a bill to amend the Servicemen's Readjustment Act of 1944 by providing a secondary market for GI loans, so to speak, in respect to the purchase of houses by veterans. I shall not take the time to read the remarks which I intended to make at the time of introducing the bill but shall simply ask permission to have the bill printed in full in the body of the RECORD, to be followed by the statement which I intended to deliver on the floor of the Senate when I introduced the bill, including reasons for the enactment of a bill to amend the Servicemen's Readjustment Act of 1944, as amended, and for other purposes.

The PRESIDING OFFICER. Without objection, the bill will be received and appropriately referred, and the bill, together with the statements presented by the Senator from Oregon, will be printed in the RECORD.

The bill (S. 2927) to amend the Servicemen's Readjustment Act of 1944, as amended, and for other purposes, introduced by Mr. MORSE, was received, read twice by its title, referred to the Committee on Labor and Public Welfare, and ordered to be printed in the RECORD, as follows:

Be it enacted, etc., That the Servicemen's Readjustment Act of 1944 is hereby further amended as follows:

(1) Change the number of section "511" thereof to read "512"; and

(2) Immediately after section 510 thereof insert the following new section:

"SECONDARY MARKET

"SEC. 511. (a) The Administrator is authorized, empowered, and directed, under such terms and conditions as he may prescribe, consistent with this act, to purchase, at a price equal to the unpaid principal plus accrued interest, hereinafter referred to as 'par,' any residential real-estate loan guaranteed under sections 501, 502, or 505 (a) of this title: *Provided*, That, (1) such loan is offered to the Administrator for purchase within 5 years of the date of its origin by the lender to whom the evidence of guaranty was originally issued, (2) the amount of unpaid principal, plus accrued interest, of any loan guaranteed before September 1, 1948, shall not exceed $12,000, (3) the original amount of any such loan guaranteed on or after September 1, 1948, shall not exceed $7,500, (4) the loan shall not be in default at the time of purchase, (5) the seller shall enter into an agreement with the Administrator that at the option of the Administrator the seller will service the loan in return for a service charge at such rate, not in excess of 1 percent per annum of the unpaid balance, as may be provided in such agreement, (6) no mortgage, if insured after September 1, 1948, shall be purchased by the Administrator unless the mortgagee certifies that the housing with respect to which the mortgage was made meets the construction standards prescribed for insurance of mortgages on the same class of housing under the National Housing Act, as amended: *Provided further*, That the Administrator may sell any loan purchased under this section at a price not less than par, with the primary right of repurchase reserved to the original mortgagee: *And provided further*, That no mortgage shall be purchased by the Administrator from any one mortgagee (1) unless such mortage is secured by property used, or designed to be used, for residential purposes and (2) if the unpaid principal balance thereof, when added to the aggregate amount paid for all mortgages purchased and held by the Administrator from such mortgagee pursuant to authority contained herein, exceeds 66⅔ percent of the original principal amount of all mortgages made by such mortgagee which are guaranteed under sections 501, 502, or 505 (a) of the Servicemen's Readjustment Act of 1944, as amended.

"(b) For the purpose of this section the Secretary of the Treasury is hereby authorized and directed to make available to the Administrator such sums as he may request from time to time between the effective date of this section and the expiration of the period of time in which loans may be offered for purchase pursuant to the terms of this

section. Such sums, together with all moneys received by the Administrator under this section, shall be deposited with the Treasurer of the United States in a special deposit account, to be disbursed through the Division of Disbursement of the Treasury Department. On sums so advanced by the Secretary of the Treasury, less those amounts deposited in miscellaneous receipts under subsection (d) hereof the Administrator shall pay semiannually to the Treasurer of the United States interest at the rate or rates determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding marketable obligations of the United States as of the last day of the month preceding the deposit.

"(c) In order to make such sums available to the Administrator the Secretary of the Treasury is hereby authorized to use, as a public-debt transaction, the proceeds of the sale of any security hereafter issued under the Second Liberty Bond Act as now in force or as hereafter amended, and the purposes for which securities may be issued under the Second Liberty Bond Act as now in force or as hereafter amended are hereby extended to include such purposes.

"(d) The Administrator shall from time to time cause to be deposited into the Treasury of the United States, to the credit of miscellaneous receipts, such of the funds in the special deposit account referred to in subsection (b) hereof, as in his judgment are not needed for the purposes hereof, and after the last day on which the Administrator may purchase loans under this section, he shall, with due allowance for outstanding commitments, cause to be so deposited all sums in said account, and all moneys received thereafter, representing the repayment or recovery of the principal of obligations purchased pursuant to this section. Interest collected by the Administrator in excess of the amount payable by the Administrator to the Treasurer pursuant to subsection (b) of this section, together with any miscellaneous receipts or credits the disposition of which is not otherwise provided for herein, shall constitute a reserve for payment of losses, if any, and expenses incurred in the liquidation of said loans. Without regard to any other provisions or limitations of law or otherwise (except the provisions of this title) the Administrator shall have authority in carrying out the functions hereby or hereunder vested in him to exercise any and all rights of the United States, including without limitation, the right to take or cause to be taken such action as in his judgment may be necessary or appropriate for or in connection with the custody, management, protection, realization, and liquidation of assets, to determine the necessary expenses and expenditures and the manner in which the same shall be incurred, allowed, paid, and accounted for and audited, to invest available funds in obligations of the United States, to make such rules, regulations, requirements, and orders as he may deem necessary and appropriate, and to employ, utilize, compensate, and delegate any of the functions hereunder to such persons and such corporate or other agencies, including agencies of the United States, as he may designate."

SEC. 2. Title III of the National Housing Act, as amended, is hereby amended as follows:

(1) In section 301 (a) (1) strike out the following: "or guaranteed under section 501, 502, or 505 (a) of the Servicemen's Readjustment Act of 1944, as amended"; and

(2) Strike out the period at the end of section 302 thereof, and insert in lieu thereof the following: "*Provided*, That after September 1, 1948, the Association shall not be authorized further to purchase loans guaranteed under sections 501, 502, and 505 (a) of the Servicemen's Readjustment Act of 1944, as amended."

The statement presented by Mr. MORSE was ordered to be printed in the RECORD, as follows:

Mr. President, I have introduced today a bill designed to allow veterans to take advantage once again, easily and in numbers, of the home-loan provisions of the GI bill of rights.

It is necessary legislation; it is simple, single-purpose legislation; it will actually put money into the Treasury of the United States, rather than drain out funds in the form of subsidies. I shall explain briefly what this bill (S. 2927) proposes and why it is needed. I trust this great body will pass this bill with a minimum delay.

In what were literally the closing minutes of the last session of this Congress, some 6 weeks ago now, we passed legislation designed to reestablish secondary markets for GI home-loan mortgages. This was necessary because, after the Government's secondary market for these mortgages had been allowed to lapse in 1947, there was a marked and alarming decrease in the number of GI home loans. The veterans simply could not find lenders when the lenders could not find a secondary market.

The action of 6 weeks ago established a secondary market in the Reconstruction Finance Corporation, where it had existed prior to midsummer of 1947. Actual working experience with the legislation has shown, however, that it is unnecessarily restrictive and that the Reconstruction Finance Corporation is tending to handle the problem in a way which underlines the restrictions.

The present bill (S. 2927) establishes a secondary market for GI home-loan mortgages in the Veterans' Administration, where we originally had intended it should be, where the veterans want it and where the operating personnel is primarily concerned with veterans' needs and rights and not with banking technicalities.

S. 2927 would authorize the Veterans' Administrator to purchase GI home-loan mortgages at par within 5 years of the date of issuance. Where such a loan had been guaranteed by the Veterans' Administration prior to September 1, 1948, the amount of unpaid principal, plus accrued interest, could not exceed $12,000. The original amount of any loan guaranteed on or after September 1, 1948, could not exceed $7,500. The service fee established under the bill would not be more than 1 percent. S. 2927 provides that the Secretary of the Treasury shall provide the Administrator with the funds necessary to carry out the purposes of the bill; that these shall be kept in a special deposit account with the Treasurer of the United States; and that the Administrator shall pay interest to the Treasurer at a rate to be established by the Secretary of the Treasury. This is a type of operation with which we are all familiar.

Nothing is wrong with the GI bill of rights, as such, but the veterans' home-loan program has declined alarmingly because of the lack of a proper secondary market. S. 2927 has the single purpose of again making the GI bill of rights effective. It is the kind of housing legislation which this extraordinary session can, and should, pass because it is not involved in the great disputes which rage around other suggested housing legislation. The market operation which it proposes will not cost the Government a cent; the record shows that the Government actually has made money on all such mortgage operations in the past.

This proposal has the backing of veterans' groups. Its benefits to the veterans are obvious. It should be noted that the building industry, building labor, and the community as a whole also would benefit since increased GI home-loan activity obviously will mean increased veterans' home building all over the United States. This bill provides a simple key to opening up a great volume of housing for a great number of veterans. This bill should be passed.

The following reasons may be cited for the enactment of the bill:

1. Public Law 864, Eightieth Congress, second session, (S. 2790 introduced by Senator JENNER) established a secondary market in the Federal National Mortgage Association for loans guaranteed under the Servicemen's Readjustment Act. As the bill was passed by the Committee on Labor and Public Welfare this authority would have been placed in the Veterans' Administration. However, by an amendment submitted by Chairman WOLCOTT in the House the authority was placed in the Federal National Mortgage Association. In this bill it is proposed to end the authority of FNMA to purchase GI loans and place the authority in the Veterans' Administration. The VA guarantees the loans and should be authorized to purchase them when offered by the original lender. Such loans should not be tied up with big banking operations of the type handled by the RFC and its subsidiaries.

2. As passed by the Senate, Public Law 864 would have allowed the purchase of 66⅔ percent of all GI mortgages offered by any one mortgagee. As changed by the House and subsequently confirmed by the Senate this authority was reduced to 25 percent and as now interpreted by the FNMA that 25 percent is based on those mortgages made after April 30, 1948. This bill would allow the purchase of 66⅔ percent of all GI loans made by any one mortgagee regardless of the date on which they were guaranteed. The restricted authority of FNMA as contained in Public Law 864 is no more than a drop in the bucket and would not even approach a solution of the problem of providing an adequate secondary market for GI loans. The institutions now holding a great volume of these loans need liquidity such as is afforded by an adequate secondary market in the Federal Government.

3. Public Law 864 as interpreted by FNMA does not allow for the purchase of any mortgages made before April 30, 1948. This bill would provide for the purchase of a percentage of any GI loans guaranteed prior to September 1, 1948 provided the outstanding obligation does not exceed $12,000. Under Public Law 864 loans made after April 30, 1948, could be purchased provided they did not exceed $10,000. Under this bill we would limit the amount of such mortgages to $7,500 guaranteed in the future. The reason for these provisions is that we cannot unreasonably restrict the purchases of mortgages heretofore made because the veterans already have them. The institutions already have them in their portfolio and they need a market for them in order to make new loans to veterans for lower priced houses in the future. We are definitely limiting future loans to lower priced houses for the veterans.

4. Under Public Law 864 the lending institution from which the FNMA purchased GI loans could be allowed not more than one-half of 1 percent for servicing the loans for the FNMA. In this bill we would leave it to the Veterans' Administration to determine the amount of the service fee provided it did not exceed 1 percent of the unpaid principal.

5. Under Public Law 864 the FNMA was authorized to purchase loans of both the FHA type and the GI type up to $300,000,000. Under this bill we authorize the Veterans' Administration to procure necessary sums from the Treasury and directs that he shall in turn deposit in the Treasury in a special deposit account any funds received by the Veterans' Administration. According to past history of such home-guaranty actions of the Federal Government, it is indicated that this provision of the secondary market in the VA will not cost the Federal Government any money but rather that the Government will make money.

ORDER OF BUSINESS—ADJOURNMENT

Mr. WHERRY. Mr. President, this morning I made the statement that there would not be a night session and that a statement with reference to recessing or adjourning the Senate would be made at the appropriate time.

I want to state at this time for the RECORD that it has become crystal clear that until the Senate's rules on cloture are amended it is impossible to take action on House bill 29, the anti-poll-tax bill. Therefore, the holding of a night session in which to attempt to do the impossible is hypocrisy in its rankest form. I think we should be honest and truthful not only to ourselves but to the American people in making our decision. It was determined this morning by the majority conference that a vote on cloture is out of the question, apparently, until the rules of the Senate are amended so as to provide that a cloture petition may be filed not only on a bill or measure, but on motions, so that all barriers, including dilatory motions, which prevent the Senate's proceeding to the consideration of important legislation, may be outlawed, so to speak.

I was a member of the subcommittee of the Committee on Rules and Administration when it reported the so-called Knowland resolution to change the cloture rule so as to eliminate dilatory motions in connection with a bill. It is my understanding that it is the intention to appoint a committee to study remedial amendments to the rule, and it is our feeling that at the beginning of another session, the session next January, if possible, we should proceed in good faith to change the rule, and should make that subject the first order of business, so that we may be able to apply cloture in connection with a motion as well as the subject matter of a bill.

Mr. MYERS. Mr. President, will the Senator yield?

Mr. WHERRY. Just a moment. I make this statement only for the reason that I made the announcement this morning that there would not be night sessions, because it is thought that continued night sessions would accomplish nothing, that they would be futile. We therefore decided that the proper course is to adjourn so that we may have a morning hour tomorrow for the consideration of legislation which may be reported under the unanimous-consent order which has been entered today, and which otherwise might have to lie over. I hope we may be able to consider such important legislation as I hope will come from the Committee on Banking and Currency dealing with anti-inflation and other matters which are now before the committee.

Mr. BARKLEY. Mr. President——

Mr. WHERRY. Just one other matter. I shall yield to the minority leader, because I think it is a courtesy which should always be extended. I regret to state to the distinguished Senator from Pennsylvania [Mr. MYERS] that I have told many Senators that there would be an immediate adjournment, and asked them to delay offering routine matters or inserting articles in the RECORD until tomorrow morning, if they would agree to that, and all to whom I spoke did agree. Therefore I yield to the minority leader, and I beg other Senators not to ask me to yield to them.

Mr. BARKLEY. I desired to have the Senator yield to me to suggest the absence of a quorum.

Mr. WHERRY. I yield to the Senator.

Mr. MAYBANK. Mr. President, I merely wish to state that the distinguished Senator from Nebraska is correct in what he says; he did request that I not ask him to yield. I thought he might appreciate confirmation of his statement.

Mr. WHERRY. I do; I thank the Senator from South Carolina.

Mr. BARKLEY. My reason for suggesting the absence of a quorum, which I do without taking the Senator from the floor, although under the rules it would deprive him of the floor, is that I may want to ask him a question or two or make a statement with regard to what he has said. I suggest the absence of a quorum.

Mr. WHERRY. I yield for that purpose. I say to the distinguished Senator from Kentucky, and also to the other Members of the Senate, that I would rather the Senator would ask me his questions now, because I intend to make a motion that the Senate adjourn.

Mr. BARKLEY. I would rather have a larger attendance.

Mr. WHERRY. Very well. I merely wanted the Senate to know that I intended to make a motion to adjourn.

Mr. BARKLEY. I understand that, and it was in connection with that that I suggested the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum is suggested, and the clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Aiken	Hawkes	Myers
Baldwin	Hayden	O'Conor
Ball	Hickenlooper	O'Mahoney
Barkley	Hill	Pepper
Brewster	Hoey	Revercomb
Bricker	Holland	Robertson, Va.
Bridges	Ives	Robertson, Wyo
Brooks	Jenner	Russell
Buck	Johnson, Colo.	Saltonstall
Butler	Johnston, S. C.	Smith
Byrd	Kem	Sparkman
Cain	Kilgore	Stennis
Capper	Knowland	Stewart
Connally	Langer	Taft
Cooper	Lodge	Taylor
Cordon	Lucas	Thomas, Okla.
Donnell	McCarthy	Thomas, Utah
Downey	McClellan	Thye
Dworshak	McFarland	Tobey
Eastland	McGrath	Tydings
Ecton	McKellar	Umstead
Ellender	McMahon	Vandenberg
Feazel	Magnuson	Watkins
Ferguson	Martin	Wherry
Flanders	Maybank	Wiley
Fulbright	Millikin	Williams
Green	Moore	Young
Gurney	Morse	
Hatch	Murray	

The PRESIDING OFFICER. Eighty-five Senators having answered to their names, a quorum is present.

Mr. BARKLEY. Mr. President, will the Senator from Nebraska yield?

Mr. WHERRY. I yield to the minority leader for an observation.

Mr. BARKLEY. Mr. President, I ask unanimous consent that without taking the Senator from Nebraska from the floor I may not only ask him a question, but make a brief observation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BARKLEY. Mr. President, I appreciate what the Senator from Nebraska, the acting majority leader, has said in regard to the present status of the rules of the Senate. There is no need to reiterate what has happened here in the past. When I was confronted with the same situation which confronts him I repeatedly stated that I favored an amendment to the rules of the Senate so that it would not be impotent when a well-organized group of a few Senators, or many, as the case might be, could, if they wished, tie up legislation indefinitely.

The other day when the Chair ruled against the cloture petition filed by the Senator from Nebraska, I then took the position, which I felt was justified, that when the Senate adopted rule XXII it really thought it was bringing about the termination of debate on any matter which was pending before it, which was the subject of extended debate, which has come to be known as a filibuster. I still entertain that viewpoint. But the Chair ruled otherwise, and there is now an appeal from that decision pending.

I do not know how long it will take to amend the rules of the Senate. There has been a resolution on the calendar for 17 months to amend the rules of the Senate. So far as I recall, no effort has been made to bring that resolution before the Senate for consideration, and no motion has been made to take it up. I realize that on such a motion the same course could be pursued as on the motion now pending. But sooner or later the Senate, it seems to me, must determine that it must lift from itself the pall of impotence in which it finds itself now, and in which it may find itself even when a motion is made to take up a resolution to amend the rules.

Surely, the Senate of the United States, which is regarded here and throughout the world as the greatest, and sometimes I have said, the most deliberative body in the world, which has come to be the last remnant of real democratic action in a legislative sense, cannot forever go on and admit that it is impossible for it to adopt rules under which it may proceed. Therefore I not only am now, but have been in the past, and shall continue in the future, so long as I am a Member of this body, to be earnestly in favor of an amendment of the Senate rules that will make it possible for the Senate to function under any conditions which may arise in the deliberations of this body and in the consideration of legislation. It is a situation and a condition which does not prevail in any other legislative body in the world. No State legislature is handicapped by any such impotence as that which now afflicts us.

I recognize the sincerity and the good faith of those who have precipitated this situation by exercising the right given to them under the rules of the Senate. Yet in spite of the sincerity which we accord to them, I think they themselves must admit that we cannot forever go along as a deliberative body without some halter upon unlimited debate or unlimited delay in the consideration of legislation.

So I wanted to say to the Senator from Nebraska, that, notwithstanding the fact that for 17 months there has been on the calendar a resolution to amend the rules—and no effort has heretofore been made to bring it up—and I presume no effort is to be made to bring it up at this session—whenever it comes up, at this session or at the next session, I am in favor of such an amendment of the rules as will make it possible for the Senate of the United States to function as an ordinary legislative body. So much for that.

Now the Senator from Nebraska is proposing to move to adjourn this day's session. I wanted to make this observation before he moved to adjourn, because it would be impossible to make it after such a motion. We have been here now several days debating the motion to proceed to the consideration of House bill 29. The cloture petition was filed, or an attempt was made to file a cloture petition on Monday. The Chair held it could not be filed under the rule because it was not a "measure" within the meaning of the rule. From that the Senator from Ohio [Mr. TAFT] appealed. That appeal is debatable no less than the motion itself is debatable, and theoretically we are now debating the appeal from the decision of the Chair. If the motion to adjourn prevails, the motion to take up the bill lapses, and the appeal of the Senator from Ohio from the decision of the Chair also lapses, and what we have been doing here for now nearly a week will end in futility, because the whole thing lapses and goes down in defeat, since the motion itself to consider the anti-poll-tax bill will lapse on a motion to adjourn, if it is adopted. For that reason I felt the Senate ought to know the effect of its vote to adjourn today.

So far as I can see, the situation is just the same as it was when the Senator from Nebraska made his motion last week. There is no business now on the calendar which was not on it then. The Senator, I think, hopes that there will be something on the calendar, maybe tomorrow. But it is not on it now. We have heard rumors that a joint committee has been appointed—not a bipartisan committee, but a joint committee of the Committees on Banking and Currency of the two Houses, a joint Republican committee of those two committees—to survey the situation to see whether some kind of legislation might be brought forth. It is probably not within my mouth to question the propriety of calling a partisan subcommittee, instead of a bipartisan subcommittee, as frequently and usually is done. But be that as it may, we do not know what will come out of that joint Republican committee.

I understand the Committee on Banking and Currency of the Senate has proceeded today to hold further hearings on the question of inflation and the cost of living. We do not know how long the committee will consider that subject, nor what they will bring here tomorrow or any other day. So that today, so far as the calendar is concerned, the situation is precisely what it was when the Senator from Nebraska made his motion last week. I wanted the Senate to understand that if we vote to adjourn today, we vote to nullify all we have done up to now on H. R. 29, and we go right back to where we were when we started. There will be a morning hour tomorrow, and it will be in order, for any Senator who feels it his duty to do so, to question the approval of the Journal, and that is debatable. Whenever it is brought in question, no other business can be performed by the Senate until the Journal is approved. So we find ourselves again tied into a bowknot in respect to the procedure of the Senate; all of which, in my judgment, without regard to politics or predilections, the American people will regard as a travesty upon free enterprise in the way of legislation before the Senate of the United States.

I do not believe any Senator can gainsay the suggestion that the American people do not understand all the maneuvers and all the parliamentary devices the Senate may resort to in order not to transact its business. Regardless of who may be responsible for it, I think the whole Senate of the United States will lose in the esteem of the American people if we do not find a way by which to legislate in any circumstances that may arise in the Senate of the United States. Therefore I wish to say that when the Senator makes his motion to adjourn, in view of the effect of an adjournment I shall ask for a yea-and-nay vote upon the motion.

I thank the Senator for yielding to me.

Mr. TOBEY. Mr. President, will the Senator yield?

Mr. WHERRY. I yielded with the firm commitment that I would yield only to the minority leader. Fifteen or twenty Senators have asked me for time to make insertions in the RECORD, and they very graciously have consented to wait until tomorrow. For that reason I am foreclosed from yielding to any other Senator at this time. I regret it; but in view of the fact that that announcement has been made, I must stand by that agreement, because I want to be absolutely fair so long as I am the acting majority leader.

Mr. TOBEY. I was merely going to help the Senator.

Mr. WHERRY. I certainly want help, I will say to the Senator.

Mr. TOBEY. I think the Senator needs it.

Mr. WHERRY. Perhaps I do. I am not through yet.

Mr. President, I was one member of the subcommittee of the Committee on Rules and Administration which reported the resolution to which the minority leader has referred. I am in total agreement with what he said about the rule. He emphatically has brought to the attention of the American people the fact that when 15 or 20 or 30 Senators unite in an effort to prevent a vote by endless debate, we cannot do a thing; and that the present rules of the Senate relative to cloture do not apply to a motion.

At least we have done one thing this week. We have demonstrated to the American people that until the rules of the Senate are changed there can be endless debate if a sufficient number of Senators band themselves together to thwart a vote by the use of the rules. I think the American people know that. I hope they do, because I think they should know the truth about the situation which confronts us in this special session. I think they should know that we knew when we started that in a special session of 12 or 15 days it would be an absolute physical impossibility to break endless debate on a question so controversial as is the poll tax.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. WHERRY. Just a moment, until I finish my remarks.

I agree with the distinguished majority leader that in times gone by, while I have been a Member of this body, he has done the very thing which we are attempting to do now. We are telling the people of the country that we are not going to hold night sessions. To my way of thinking, to do so would simply be hypocrisy.

I am going back to my State, and to the city of Omaha, and tell those who are interested in the anti-poll-tax legislation that I did my level best to bring it to a vote, and that we could not obtain a vote because of the rules of the Senate. I want to be honest about it. I do not want to say that I instituted night sessions for 2 or 3 nights when I knew when I did so that we would have to abandon the effort because we could not accomplish our purpose. Let us be honest. Let us tell the American people the truth. I am not going to be the one who moves for night sessions. This question arose because of requests that there should be no night session tonight. I will not subscribe to a policy which deceives the American people. We are going to tell them the truth, and that is the truth.

With respect to adjournment, I agree with the minority leader that when the motion to adjourn is agreed to we shall get back to the unfinished business. In the morning hour motions may be made. Senators may do as they please about adjournment. Senators who wish to offer amendments to any legislation, including the poll-tax amendment, may offer such amendments to any legislation which is considered by the Senate.

Mr. President, my firm belief is that the majority in their conference this morning took the right course. I subscribed to it. In fact, I advised it. So I am ready now to make the motion to adjourn.

Mr. RUSSELL. Mr. President, will the Senator yield?

Mr. WHERRY. I agreed not to yield to any Senator other than the minority leader. He was on his feet a moment ago. If he wishes me to yield again, I shall be glad to do so.

Mr. BARKLEY. It is too late now.

Mr. WHERRY. Mr. President, I move that the Senate adjourn until tomorrow at noon.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Nebraska.

Mr. BARKLEY. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered, and the Chief Clerk called the roll.

Mr. WHERRY. I announce that the Senator from South Dakota [Mr. BUSHFIELD] and the Senator from Kansas [Mr. REED] are necessarily absent.

The Senator from Indiana [Mr. CAPEHART], the Senator from Nevada [Mr. MALONE], and the Senator from Iowa [Mr. WILSON] are detained on official business.

Mr. LUCAS. I announce that the Senator from New Mexico [Mr. CHAVEZ] is unavoidably detained.

The Senator from Georgia [Mr. GEORGE], who is unavoidably detained, would vote "yea" if present.

The Senator from Nevada [Mr. MCCARRAN] and the Senator from Texas [Mr. O'DANIEL] are necessarily absent.

The Senator from New York [Mr. WAGNER], who is necessarily absent, would vote "nay" if present.

The result was announced—yeas 69, nays 16, as follows:

YEAS—69

Aiken	Fulbright	Morse
Baldwin	Gurney	O'Conor
Ball	Hawkes	O'Mahoney
Brewster	Hayden	Revercomb
Bricker	Hickenlooper	Robertson, Va.
Bridges	Hill	Robertson, Wyo
Brooks	Hoey	Russell
Buck	Holland	Saltonstall
Butler	Ives	Smith
Byrd	Jenner	Sparkman
Cain	Johnston S. C.	Stennis
Capper	Kem	Stewart
Connally	Knowland	Taft
Cooper	Langer	Thye
Cordon	Lodge	Tobey
Donnell	McCarthy	Tydings
Dworshak	McClellan	Umstead
Eastland	McFarland	Vandenberg
Ecton	McKellar	Watkins
Ellender	Martin	Wherry
Feazel	Maybank	Wiley
Ferguson	Millikin	Williams
Flanders	Moore	Young

NAYS—16

Barkley	Lucas	Pepper
Downey	McGrath	Taylor
Green	McMahon	Thomas, Ok'a.
Hatch	Magnuson	Thomas, Utah
Johnson, Colo.	Murray	
Kilgore	Myers	

NOT VOTING—11

Bushfield	McCarran	Wagner
Capehart	Malone	White
Chavez	O'Daniel	Wilson
George	Reed	

So Mr. WHERRY's motion was agreed to; and (at 4 o'clock and 34 minutes p. m.) the Senate adjourned until tomorrow, Thursday, August 5, 1948, at 12 o'clock noon.

HOUSE OF REPRESENTATIVES

WEDNESDAY, AUGUST 4, 1948

The House met at 12 o'clock noon.

Rev. C. Howard Lambdin, pastor of St. Luke's Methodist Church, Washington, D. C., offered the following prayer:

Let us pray.

Eternal and everlasting Father, we invoke Thy divine guidance upon us as we begin the official duties of this day. Enable us, we pray Thee, in a world of many voices, to hear now and always the "still small voice within"; not only may we hear it, but may we heed it as well.

The demands made upon our lives are many and our responsibilities are great. Help us, dear Father, to remember that we are Thy children and also that we are Thy workmen. Thou art depending on us to be "laborers together with Thee" for the building of Thy kingdom on earth.

Save us from selfishness, which would keep us from such sacred service, and increase our devotion to the highest good that we may become the servants of righteousness.

We pray Thy blessing on our land and our Nation, on the President of these United States, and on the Members of the Congress, and on all others who help to carry the responsibilities of leadership. May a great integrity of character be with all of our leaders, and may they be men and women after Thine own heart.

Hasten the day, O Lord, when a just, honorable, and desirable peace shall come to all nations on our earth, when "nation shall not lift up sword against nation, neither shall they learn war any more."

Bless us this day and every day; and when, good Father, our days of labor are over, grant to each of us safekeeping with Thee. Through Jesus Christ our Lord. Amen.

The Journal of the proceedings of Monday, August 2, 1948, was read and approved.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Mr. Nash, one of his secretaries.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Frazier, its legislative clerk, announced that the President pro tempore has appointed Mr. LANGER and Mr. MCKELLAR members of the joint select committee on the part of the Senate, as provided for in the act of August 5, 1939, entitled "An act to provide for the disposition of certain records of the United States Government," for the disposition of executive papers in the following departments and agencies:

1. Department of Agriculture.
2. Departments of the Army and the Air Force.
3. Department of Justice.
4. Department of the Navy.
5. Post Office Department.
6. Housing and Home Finance Agency.
7. Office of Selective Service Records.
8. Veterans' Administration.

SPECIAL ORDER GRANTED

Mr. POTTS. Mr. Speaker, I ask unanimous consent that on tomorrow, after any special orders heretofore entered, the gentleman from New York [Mr. JAVITS] may be permitted to address the House for 10 minutes.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

DEPARTMENT OF COMMERCE

Mr. POTTS. Mr. Speaker, I ask unanimous consent to address the House for 1 minute and to revise and extend my remarks.

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. POTTS. Mr. Speaker, in June 1947, the Committee on Merchant Marine and Fisheries was much disturbed about the shipment of oil to Russia from this country because we knew there was a shortage of oil to take care of the needs of the Army and Navy and the civilian needs of last year's very cold winter. Consequently, the committee held hearings at that time to inquire into the situation.

There were then loading on the Pacific coast three tankers flying the Russian flag. These were American-owned tankers loaned to Russia under lend-lease and which she refused to return to us. Yet here they were in our waters, and we were filling them with our own much-needed oil for shipment to the same country which refused to return these ships to us.

One of the witnesses called at the hearings was Mr. William C. Foster, Under Secretary of Commerce. The amazing part of his testimony was the utter disregard which he displayed of a request of the chairman of the committee made to him by telephone that the ships be not licensed to sail. The Commerce Department seemingly expedited the licenses because they were issued the same morning that the chairman requested they be held up. The testimony on the point is as follows:

Mr. BRADLEY. In relation to the ships we have loading out in my district, Long Beach, San Pedro, and so on, for Russia, did I understand you to say that it is the intention of the Department to grant the export licenses so that those ships can load and get away?

Mr. FOSTER. Yes, sir; there are three ships out there at the moment, and we have actually issued the licenses on those three.

Mr. BRADLEY. I was interested because I have had a great many inquiries along that line, and there is nothing confidential in that information.

Mr. FOSTER. Nothing. No, sir.

Mr. BRADLEY. Thank you.

Mr. FOSTER. That was licensed this morning.

The CHAIRMAN. That was licensed this morning; after I made a request on behalf of this committee that they not be licensed to go you licensed them to go this morning.

Mr. FOSTER. That's right, sir. I still have no official request from the committee.

The CHAIRMAN. You have a telegram, don't you?

Mr. FOSTER. No, sir.

The CHAIRMAN. Didn't you get that?

Mr. FOSTER. I have not had any telegram from the committee.

The CHAIRMAN. What?

Mr. FOSTER. I have had no telegram from the committee.

The CHAIRMAN. You received one signed by the chairman, didn't you?

Mr. FOSTER. No, sir.

The CHAIRMAN. I called you about it.

Mr. FOSTER. You called me and told me over the phone that you were sending one.

The CHAIRMAN. And I told you I was making a request then.

Mr. FOSTER. And I said I would be very glad to take it into consideration, as we do all such requests.

The CHAIRMAN. The consideration you gave was that after the request was made you licensed it.

Mr. FOSTER. That is correct, sir.

This morning's news clarifies the picture. William W. Remington, accused of giving Government information and material to Elizabeth T. Bentley, erstwhile Russian spy and Communist, is the director of the Commerce Department's export-programs staff. Now the reason for the haste in licensing these oil-bearing ships is apparent. We have a